119-680

# TRANSCRIPT OF RECORD.

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## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1885.**

No. 1041. 661

THE TOWN OF ENFIELD, PLAINTIFF IN ERROR,

*vs.*

C. N. JORDAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

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**FILED OCTOBER 9, 1885.**

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1 UNITED STATES OF AMERICA:

The President of the United States of America to the judges of the circuit court of the United States of America for the southern district of Illinois, Greeting:

Because in the record and proceeding, and also in the rendition of the judgment of a plea which is in the said circuit court of the United Statees for the southern district of Illinois, before you, between C. N. Jordan, plaintiff, and The Town of Enfield, defendant, a manifest error hath happened, to the great damage of the said defendant, The Town of Enfield, as by its complaint appears, we being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second 2 Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Hon. Morrison R. Waite Chief Justice of the said Supreme Court of the United States, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and tenth year.

[The Seal of the Circuit Court of the United States for the South. Dist. Ill.]

J. A. JONES,
*Clerk Circuit Court U. S., South. Dist. Ill's.*

Filed August 29, 1885. J. A. Jones, clerk.

3 Pleas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, on Thursday, the fourteenth day of August, at the June term of said court, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the one hundred and ninth year, before the Hon. Samuel H. Treat, district judge of said district.

J. A. JONES, *Clerk.*

*Assumpsit.*

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

C. N. JORDAN *v.* TOWN OF ENFIELD.

Be it remembered that heretofore, to wit, on the ninth day of May, in the year of our Lord one thousand eight hundred and eighty-three, came C. N. Jordan, the plaintiff, a citizen of the State of New York, by Thomas C. Mather, Esq., his attorney, and filed in the office of the clerk of the circuit court of said district his bond for costs herein, which said bond for costs is in the words and 4 figures following, to wit:

*Bond for Costs.*

UNITED STATES OF AMERICA, } *ss:*
*Southern District of Illinois,* }

Circuit Court. June Term, A. D. 1883.

C. N. JORDAN *vs.* TOWN OF ENFIELD.

In assumpsit. Damages $2,000.

I do hereby enter myself security for costs in this cause and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State and of the United States.

Dated this 9th day of May, 1883.

T. C. MATHER.

(Indorsed:) Filed May 9th, A. D. 1883. J. A. Jones, clerk.

And afterwards, to wit, on said ninth day of May, of the year aforesaid, a summons was issued in said entitled cause out of the office of the said circuit clerk, directed and delivered to the marshal of said district to execute, which said summons is in the words and figures following, to wit:

5 *Summons.*

Circuit Court of the United States of America.

SOUTHERN DISTRICT OF ILLINOIS, *ss:*

The United States of America to the marshal of the southern district of Illinois, Greeting:

We command you to summon The Town of Enfield, if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of June next, to answer unto C. N. Jordan of a plea of assumpsit to his damage, as he alleges, of two thousand dollars; and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Springfield aforeseid, this ninth day of May, in the year of our Lord one thousand eight hundred and eighty-three, and of our Independence the one hundredth and seventh year.

[L. S.] J. A. JONES, *Clerk.*

6 I hereby appoint J. B. Odell my lawful deputy to execute this writ this 9th day of May, 1883.

JACOB WHEELER,
*U. S. Marshal.*

Executed this writ upon the town of Enfield May 17th, 1883, by reading the same and by delivering a true copy to A. A. Newman, president of the board of trustees of the town of Enfield, as I am herein commanded.

JACOB WHEELER,
*U. S. Marshal.*
By J. B. ODELL, *Deputy.*

Subscribed and sworn to before me this 18th day of May, 1883.
[L. S.] JOHN N. WILSON, *N. P.*

(Endorsed:) Filed may 19th, A. D. 1883. J. A. Jones, clerk.

Afterwards, to wit, on the fifteenth day of May, of the year aforesaid, came again said plaintiff, by his attorney, and filed in the clerk's office of said court his declaration and copy of instruments sued on; which said declaration and copy of instruments sued on are in the words and figures following, to wit:

7 *Declaration.*

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In Circuit Court. June Term, A. D. 1883.

C. N. Jordan, a citizen of the State of New York, plaintiff, by T. C. Mather, his attorney, complains of The Town of Enfield, defendant, of a plea of trespass on the case upon promises, for that whereas the said defendant heretofore, to wit, on the first day of January, A. D. 1871, at, to wit, the district aforesaid, in pursuance of the laws of the State of Illinois and a vote of the people of said town, had in pursuance thereof prior to 1870, made its certain twenty-two-interest coupons in writing, and then and there delivered the said coupons, by which said coupons said defendant then and there promised to pay bearer at their respective dates of maturity said sums of money in and by said coupons respectively mentioned, to wit, the sum of fifty dollars by each of said coupons on, to wit, the first day- of January and July, respectively, for the years 1880, 1881, 1882, and 1883; and plaintiff avers he is the owner and bearer thereof, and that he purchased the same at, to wit, New York, the first day of January, 1880. By reason whereof and by force of the statute in such case made and provided, the defendant became liable to pay plaintiff the said sums of money in said 8 coupons specified, according to the tenor and effect of the said coupons, and being so liable the said defendant, in consideration thereof, afterwards to wit, on the same day and year, and at the district aforesaid undertook and then and there faithfully promised plaintiff well and truly to unto pay plaintiff the said sums of money in the said coupons specified, according to the tenor and effect of the said coupons; and whereas, also, the defendant, on, to wit, the first day of April, 1883, at, to wit, said district, was, and still is, indebted to plaintiff in the sum of two thousand dollars for money before that time paid, laid out, and expended by plaintiff for the use of defendant at its request, and in the sum of two thousand dollars for money before then lent and accommodated by plain-

tiff to defendant at its request, and in the sum of two thousand dollars for money before then had and received by defendant to use of plaintiff, and in the sum of two thousand dollars before then due from defendant to plaintiff for interest upon divers large sums of money before then due from defendant to plaintiff, and by plaintiff
9 foreborne to defendant for long spaces of time before then elapsed at the request of defendant; and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the district aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sums of money last mentioned when the said defendant shall be thereunto afterwards requested. Nevertheless, the said defendant (although often requested, etc., to wit, on the day when the said coupons became due and payable, according to the tenor and effect thereof, and oftentimes since, to wit, at the district aforesaid) has not yet paid the several sums of money above mentioned, nor any or either of them, or any part thereof, to the said plaintiff; but to pay the same or any part thereof to the said plaintiff the said defendant has hitherto altogether refused, and still does refuse, to the damage of the said plaintiff of two thousand dollars; and, therefore, the said plaintiff brings suit, etc.

By T. C. MATHER, *His Att'y.*

(Indorsed:) Filed May 15, 1883. J. A. Jones, clerk.

10 *Copy of Instruments Sued on.*

Town of Enfield, county of White, State of Illinois will pay to bearer fifty dollars at the First National Bank of Shawneetown, Illinois, on the first day of January, 1882, being six months interest on railroad bond No. 7.

M. A. MILLER, *Chairman.*

The defendant is notified that all the other coupons sued on and to be offered in evidence in this suit are fac similes of each other and of the above copy, except as to bond numbers thereon and dates of maturity.

T. C. MATHER,
*Att'y for Pl'ff.*

*Copy of Ac. Sued On.*

Town of Enfield to C. N. Jordan, Dr.

| | |
|---|---|
| To money paid, laid out, and expended | $2,000 |
| " " lent and advanced | $2,000 |
| " " had and received | $2,000 |
| " " due on account of interest | $2,000 |

(Indorsed:) Filed May, 15, 1883. J. A. Jones, clerk.

11 Then afterwards, to wit, on the fourth day of June, in the June term of said court, in the year aforesaid, the following proceedings were had in said court in said cause, and entered of record, to wit:

*Rule to Plead.*

C. N. GORDAN *v.* TOWN OF ENFIELD.

Assumpsit.

On motion of plaintiff, by T. C. Mather, Esq., his attorney, the defendant, having been regularly served with process, is ruled to plead herein by Wednesday, the 6th day of June inst.

Now, afterwards, to wit, on the fifth day of said June, in the term and year aforesaid, the following further proceedings were had in said court in said cause, and entered of record, to wit:

*Order Extending Rule to Plead.*

C. N. JORDAN *v.* TOWN OF ENFIELD.

Assumpsit.

On motion of defendant, by Messrs. Patton and Hamilton, its attorneys, the rule to plead herein is extended to the 20th day of June inst.

12 Afterwards, on the sixteenth day of said June, of the year aforesaid, came the defendant, by Messrs. C. H. Patton and Patton and Hamilton, its attorneys, and filed in the clerk's office of said court its plea herein, which said plea is in the words and figures following, to wit:

*Plea.*

Circuit Court of United States, Southern District of Illinois. June Term, A. D. 1883.

TOWN OF ENFIELD *a't's.* C. N. JORDAN.

Ass't.

And the defendant, by C. H. Patton and Patton & Hamilton, its attorneys, comes and defends the wrong and injury when, &c., and says that it did not promise in manner and form as the plaintiff has above thereof complained against it, and of this it puts itself upon the country, etc.

C. H. PATTON &
PATTON & HAMILTON,
*Its Attorneys.*

Pl'ff doth the like by—
T. C. MATHER,
*Att'y for Pl'ff.*

(Indorsed:) Filed June 16, 1883. J. A. Jones, clerk.

13 Then afterwards, to wit, on the fourteenth day of August, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-four, the following further proceedings were had in said court in said cause and entered of record, to wit:

### *Judgment.*

C. N. JORDAN *v.* TOWN OF ENFIELD.

Assumpsit.

And now, on this 14th day of August, 1884, come the parties, by their counsel, and by stipulation in writing waive a jury, and submit this cause to the court for trial; and the court, having heard and considered their proofs and allegations, and being sufficiently advised in the premises, doth find the issue in favor of the plaintiff, and assess his damages to the sum of eleven hundred and eighty-three dollars and fifty cents.

It is therefore ordered by the court that the plaintiff recover of the defendant the said sum of eleven hundred and eighty-three dollars and fifty cents and his costs herein expended, and that he have
execution therefor. And the defendant thereupon enters a
14 motion for a new trial.

Now, afterwards, to wit, on the third day of July, in the June term of said court, in the year of our Lord one thousand eight hundred and eighty-five, the following further proceedings were had in said court before the Honorable Walter Q. Gresham, judge of said circuit court, presiding judge, and the Honorable Samuel H. Treat, judge of the district court of said district, associate judge, and entered of record, to wit:

### *Order by Hon. Walter Q. Gresham Overruling Motion for New Trial.*

C. N. JORDAN *v.* TOWN OF ENFIELD.

Assumpsit.

This day the motion for a new trial heretofore entered by defendant came on to be heard, and the court, having heard argument of counsel thereon, and being sufficiently advised in the premises, overrules said motion.

Afterwards, to wit, on the twenty-ninth day of August, in
15 the year of our Lord one thousand eight hundred and eighty-
five, a certificate of division was filed in said court in said
cause, and entered of record, to wit:

### *Certificate of Division.*

In the Circuit Court of the United States for the Southern District of Illinois.

Present: The Hon. Walter Q. Gresham, circuit judge, and the Hon. Samuel H. Treat, district judge.

C. N. JORDAN *v.* TOWN OF ENFIELD.

Assumpsit.

On the hearing of the above-entitled cause (upon the pleadings and stipulation of facts set forth in Exhibit "A" hereto attached) the following questions arose, viz:

1st. Whether the incorporated Town of Enfield, in White county, Illinois, had power to vote and issue the bonds and coupons in controversy under any of the provisions of the following laws, to wit:
"An act to extend the corporate powers of the Town of En-
16 field," in force March 15th, 1869. Private laws of Illinois,
1869, vol. 4, p. 277.

"An act to incorporate the Illinois Southeastern Railway Company," in force Feb'y 26th, 1867. Private laws of Ill., 1867, 2nd vol., p. 750.

"An act to amend an act entitled 'An act to incorporate the Illinois Southeastern Railway Company,'" in force Feb'y 24th, 1869. Private laws [of] Ills., 1869, vol. 3, p. 308.

2ndly. More particularly whether said town had said power under § 10 of said last-mentioned act.

3rdly. Whether said town is not estopped from further defence by the litigation heretofore had between it and plaintiff in this court upon the pleadings and facts stipulated and judgment rendered therein, all as shown and set forth in said Exhibit "A" hereto.

4thly. In case there was power in said town under said laws to vote and issue said bonds and coupons, whether one of said bonds, and the coupons thereto belonging, are void in the hands of plain-
tiff in this suit by reason of one Post having litigated it in
17 the State courts of Illinois, as shown in said Exhibit "A."

And the opinions of the said judges being divided upon the questions before stated, and each of them, they hereby certify the same, according to the statute in such case made and provided. But the Hon. Walter Q. Gresham, circuit judge, being of opinion that the plaintiff should have judgment, in view of the foregoing findings, judgment is accordingly hereby entered for plaintiff.

W. Q. GRESHAM,
*Circuit Judge.*
S. H. TREAT,
*Dist. Judge.*

(Indorsed:) Filed August 29, 1885. J. A. Jones, clerk.

EXHIBIT A to certificate of division.

UNITED STATES OF AMERICA, *Southern District of Illinois:*

In Circuit Court, June Term, A. D. 1884.

C. N. JORDAN *vs.* TOWN OF ENFIELD.

It is hereby stipulated that the above-entitled cause shall
18 be submitted to the court for trial without the intervention
of a jury and upon the following statement of facts:

1st. That the town of Enfield, White county, Ills., was incorporated under an act of the General Assembly of the State of Illinois approved March 15th, 1869, as follows:

## *Act of General Assembly of State of Illinois Incorporating Town of Enfield.*

An act to extend the corporate powers of the town of Enfield.

### ARTICLE I.

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That the inhabitants of the town of Enfield, in the county of White and the State of Illinois, be, and they are hereby, constituted a body corporate and politic by the name and style of "The Town of Enfield," and by that name shall have perpetual succession, and may have and use a common seal, which they may change and alter at pleasure.

§ 2. The corporate limits of said town shall include all that district of country known as the southeast quarter of section 8, the south half of northeast quarter of section 8, the southwest quarter of section 9, the south half of the northwest quarter of section 9, the north half of northwest quarter of section 16, and the north half of northeast quarter of section 17, all in *in* township 5 south, of range
19 8 east, in said county of White.

§ 3. The inhabitants of said town by the name and style aforesaid shall have power to sue and be sued, to plead and be impleaded, to defend and be defended, and in all courts of law and equity and in all actions whatsoever to purchase, receive, and hold property, both real and personal, in said town, and to purchase, receive, and hold real property beyond the limits of said town, and to sell, lease, convey, and improve property, real and personal, for the benefit of said town, and to do all other things in relation thereto as natural persons.

§ 4. That whenever any tract of land adjoining the said town of Enfield shall be laid off in town lots and recorded according to law, the same shall be annexed to and form a part of said town.

### ARTICLE II.

#### *Of Town Council.*

Section 1. There shall be a town council, to consist of five trustees, to be chosen annually by the legal voters of said town.

§ 2. No person shall be a member of the town council unless he shall be at the time of, and shall have been for six months immediately preceeding his election, a resident of said town, twenty-one years of age; also a freeholder of said town, and a citizen of the United States.

20 § 3. If any member of the town council shall, during the term of his office, remove from the town his office shall thereby be vacated.

§ 4. The town council shall judge of the qualifications, elections, and returns of its own members, and shall determine all contested elections.

§ 5. A majority of the town council shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members under such fines and penalties as may be prescribed by ordinance.

§ 6. The town council shall have power to make rules for its proceedings and punish members for disorderly conduct in such manner as may be prescribed by ordinance.

§ 7. The town council shall keep a journal of its proceedings.

§ 8. No member of the town council, during his term of office, shall be appointed to any office under the authority of the council.

§ 9. The vacancies that may occur in the town council shall be filled by election.

§ 10. Each and every member of the town council shall take and subscribe an oath, before entering upon the duties of his office, that he will support the Constitution of the United States and of the State of Illinois, and that he will well and truly perform the duties of his office to the best of his ability.

21 § 11. Whenever there shall be a tie in the election of any member of the town council, or other officer elected thereof, the judges of said election shall certify the same to some acting justice in said town, or the one residing nearest thereto, who shall determine the same by lot, as shall be provided for by ordinance.

§ 12. There shall be twelve stated meetings of the town council in each year, at such times and places as may be prescribed by ordinance.

## ARTICLE III.

### *Elections.*

SECTION 1. On the first Monday in May, next ensuing the date hereof, between the hours of one and five o'clock p. m., an election shall [be] held in said town of Enfield for the election of five members of the town council, one police magistrate, one treasurer, and one town constable, and forever thereafter on the first Monday of the month of May in each year there shall be an election held for such officers. The first election shall be held and conducted and returns thereof made as provided by ordinance of the present president and trustees of said town, and all succeeding elections to be provided by ordinance of the town council by this act created.

22 § 2. All persons who are entitled to vote for State officers, and who shall have been actual residents of said town for sixty days next preceding said election, shall be entitled to vote for said officers.

## ARTICLE IV.

### *Powers of Town Council.*

SECTION 1. The town council shall have power and authority to levy and collect taxes upon all property, real and personal, within the limits of said town, as provided in section nine of the act entitled "An act to incorporate towns and cities," approved February 10, 1849, at a rate not exceeding one per centum on the assessed value thereof.

§ 2. The town council shall have power to appoint a clerk, supervisor of streets, and all such other officers as may be necessary, and to require all officers appointed in pursuance of this charter to give bonds, with such penalties and securities for the faithful performance of their duties as may be deemed expedient.

§ 3. To appropriate money for the use of and provide for the payment of the debts and expenses of said town.

§ 4. To make regulations to secure the general health of the inhabitants of said town, to declare what shall be considered a
23 nuisance, and *and* to prevent and remove the same.

§ 5. To provide the towns with water; to sink and keep in repair wells and pumps in the streets of said town for the convenience of the inhabitants thereof.

§ 6. To make sidewalks; to open, alter, extend, grade, pave, vacate, or otherwise improve and keep in repair the streets and alleys.

§ 7. To prohibit indecent exposure of persons in the streets, alleys, lanes, or elsewhere in said town.

§ 8. To erect market-houses and to establish market-places, and to provide regulations for the government thereof.

§ 9. To provide for inclosing, improving, and regulating all public grounds which now or may hereafter belong to said town.

§10. To license, tax, and regulate auctioneers, hawkers, peddlers, brokers, pawnbrokers, exhibitions, shows, and other amusements: Provided, That in no case shall the town council aforesaid grant a license to any person or persons to barter or sell or traffic in intoxicating drinks or liquors of any kind as a beverage, or license any house of ill-fame or any species of gambling whatever within the said corporate limits, or within one mile of the same.

24 § 11. To provide for the prevention and extinguishment of fires; to organize and regulate fire companies.

§ 12. To regulate the storage of gunpowder, tar, and other combustible materials.

§ 13. To provide for taking the enumerations of the inhabitants of said town.

§ 14. To regulate the election of town officers, and to provide for the removal of any person holding an office created by ordinance.

§ 15. To fix the compensation of town officers, and to regulate the fees of jurors, witnesses, and others for services rendered under this act or any ordinance: Provided, That each board shall have the right to fix the salary of the next board; and also in no case shall their compensation exceed the sum of twenty-five dollars per annum each.

§ 16. To regulate the police of the town; to impose fines, forfeitures, and penalties for the breach of any ordinance, and to provide for the recovery and appropriation of such fines and forfeitures and for the enforcement of such penalties: Provided, That the right of trial by jury shall in no case be denied to any person charged with a breach of any of the provisions of this act or any ordinance.

25 § 17. The town council shall have power to make and enforce all ordinances necessary and proper for carrying into

effect all of the powers specified in this act, so that such ordinances are not repugnant to or inconsistent with the Constitution of the United States or of the State of Illinois.

§ 18. The style of all ordinances shall be: "Be it ordered by the town council of the town of Enfield."

§ 19. All the ordinances of the town may be proven by the seal of the corporation, or, when recorded or published in book or pamphlet form, the same shall be received in evidence in all courts and places without further proof.

§ 20. It shall be the duty of the police magistrate, or any justice of the peace in said town, and he is hereby authorized and empowered, on view, or on any complaint being made to him upon oath, of the violation of any law or ordinance of said town, to issue his warrant directed to the town constable, or, in his absence, to any constable, or to any person authorized by him, to apprehend the offender or offenders, and to bring him, her, or them forthwith be-
fore him, and, after hearing the evidence, if it shall appear
26 that the accused has been guilty of a violation of any of
the laws or ordinances of said corporation, to impose such fine or imprisonment as may be provided in such laws and ordinances of said corporation for a breach thereof.

§ 21. Any fine or penalty or forfeiture incurred under this act, or under any by-law or ordinance made in pursuance of this act, or any act that may be passed amendatory thereof, may be recovered, together with costs, before the police magistrate or any justice of the peace in said town; and the several fines, forfeitures, or penalties for breaches of the same ordinance or by-law, not exceeding one hundred dollars, may be recovered in one suit; and the first process shall be a summons, unless oath or affirmation be made for a warrant by some credible person; but in all cases of assault and battery, affray, or riot a warrant shall issue for the arrest of the offender or offenders, in the same manner as for like offenses against the laws of the State. Upon rendition of judgment for any fines, penalties, or forfeitures the police magistrate or justice shall issue his execution forthwith for the same and costs of suit, which may
be levied upon any personal property of the defendant or
27 defendants not exempt from execution. If the constable
return such execution "No property found," the police magistrate or justice shall issue a capias against the body of the defendant or defendants, and the constable shall arrest such person or persons and commit him or them to the county jail, there to remain in imprisonment for the length of time fixed by the ordinance under which he or she or they may be convicted.

§ 22. The town council, at its first meeting after its election, shall elect one of their number president of the board.

## Article V.

### *Of the President.*

Section 1. The president shall preside at all meetings of the town council, and shall have the casting vote, and no other, and in case of his non-attendance at any meeting of the council the council shall appoint one of their number to preside at the meeting.

§ 2. The president, or any two members of the council, may call special meetings of the town council.

§ 3. The president shall have power whenever he shall deem it necessary to require of any officer of said town an exhibit of his books and papers, and shall have power to do all other acts required of him by any ordinance made in pursuance of this act.

## 28 ARTICLE VI.

### *Of Proceedings in Special Cases.*

SECTION 1. When all the owners of property on any street or alley proposed to be opened or altered shall petition therefor the town council shall provide for opening or altering the same; but no compensation shall be allowed to those petitioning for property so taken, and in no case shall any street or alley be opened or altered, except no such petition.

## ARTICLE VII.

SECTION 1. The inhabitants of the town of Enfield are hereby exempted from working upon any road beyond the *the* limits of the corporation, and from payment of any tax for procuring labor to be done upon any such road.

§ 2. The town council shall have power, when it may be necessary for the purpose of keeping in repair the streets and alleys of said town, to require every able-bodied male inhabitant of said town, over twenty-one years of age and under fifty, to labor on said streets and alleys, not exceeding three days in each year; and any person failing to perform such labor when duly notified by the supervisors of said town shall forfeit and pay the sum of one dollar to said town for each and every day so neglecting or refusing.

§ 3. The town council shall cause to be posted at the post-office door, in said town of Enfield, or published in some news-
29 paper, annually, a full and complete statement of all moneys received and expended during the preceding year, and on what account received and expended.

§ 4. All suits, actions, and prosecutions instituted by the corporation hereby created shall be instituted and prosecuted under the name and style of the town of Enfield; and all fines, forfeitures, and penalties incurred under this act, or under any law or ordinance made in pursuance thereof, or of any act amendatory thereof, and all moneys received for licenses from the sources mentioned in section 10, article 4, of this act, shall inure to the corporation and be paid into the town treasury, and shall be subject to the disposal of the town council as in the case of other moneys received by the town.

§ 5. All ordinances and resolutions passed by the present president and trustees of the town of Enfield shall remain in full force until the same shall have been repealed by the town council hereby created; and the said president and trustees shall continue in office and exercise all the powers with which they are now vested until the town council hereby created shall have been elected and qualified.

§ 6. All actions, fines, penalties, and forfeitures which have accrued to the president and trustees of the town of Enfield shall be vested in and prosecuted by the corporation hereby created.

30 § 7. This charter shall not invalidate any act done, or to be done, by the president and trustees of the town of Enfield, nor divest them of any rights which have accrued to them prior to the passage of this act.

§ 8. Appeals shall be allowed in all cases arising under any ordinance in pursuance of this act to the circuit court in like manner and under the same requirements that appeals are taken from justices of the peace in civil cases under the statute.

§ 9. Whenever any of the officers enumerated herein shall become vacant, by death or otherwise, the town council shall immediately cause such vacancy to be filled by election.

§ 10. This act is hereby declared a public act, and may be read in all courts without proof.

§ 11. The town constable, or any other constable in the county, shall have the power to execute all writs or other processes issued under any ordinance, and receive the same fees allowed constables in like cases under the statute.

§ 12. This act is to — effect from and after its passage.

Approved March 15, 1869.

31 2nd. That the Illinois Southeastern Railway Company was incorporated under an act of the Illinois Legislature, approved February 25th, 1867, as follows:

### *Act of General Assembly of State of Illinois Incorporating Illinois Southeastern Railway Company.*

An act to incorporate the Illinois Southeastern Railway Company

SECTION 1. Be it enacted by the people of the State of Illinois represented in the General Assembly, That Charles A. Beecher, Joseph J. R. Tuoney, Robert P. Hanna, Carroll C. Boggs, Joseph T. Fleming, Henry Hathausen, and Edward Bonham, of Wayne county, and John W. Wescott, William B. Wilson, Daniel McConly, and William H. Hanna, of Clay county, their associates, successors, and assigns, are hereby created a body corporate and politic under the name and style of "The Illinois Southeastern Railway Company," and by that name and style shall be capable, in law and equity, of suing and being sued, pleading and being impleaded, defending and being defended against in all courts and places whatsoever, in like manner as natural persons, and may have and use a common seal and alter and renew the same at pleasure, and by their corporate name and style shall be capable in law of contracting and being contracted with and taking and purchasing, receiving, or in
32 any manner receiving, acquiring, and holding, leasing, selling, and conveying or assigning any property, whether real,

personal, or mixed, so far as they may deem necessary for the purposes of this act.

§ 2. The Illinois Southeastern Railway Company shall have full power and authority to locate, construct, finish, equip, and maintain a railroad, with one or more tracks, commencing at some suitable point on the Chicago branch of the Illinois Central railroad, running thence by such line as shall be deemed by them most convenient, by way of Fairfield, in Wayne county, to the Ohio river at any point not south of Metropolis City nor north of Shawneetown, and shall also have full power and authority to locate, construct, equip, and maintain a branch of said railroad, with one or more tracks, upon such line as they may deem most convenient from Fairfield, in Wayne county, to the Great Wabash river, at any point not further north than Greyville, on said river: Provided, That the point of junction or connection of said railroad with the Chicago branch of the Illinois Central railroad may be at any point not north of Mason, in Effingham county, nor south of Kinmundy, in Marion county,
and said railroad may intersect or cross the Ohio and
33 Mississippi railroad at any point not further east than Clay
City nor west of the town of Zenia, both in Clay county;
and if said company shall deem it advisable to build said branch of said railroad before the completion of the main line, or any part thereof, they are hereby fully empowered and authorized so to do.

§ 3. The capital stock of said company may consist of one million of dollars, which may be increased by the board of directors to any sum not exceeding six millions, to be divided into shares of one hundred dollars each, which may be sold and transferred in the manner provided for in the by-laws of said company.

§ 4. The affairs of said company shall be controlled and managed by a board of directors consisting of eight persons, which may be increased to any number not exceeding thirteen, a majority of whom shall constitute a quorum for the transaction of business, and Chas. A. Beecher, Joseph T. Fleming, William H. Hanna, Joseph J. R. Turney, Carroll C. Boggs, Edward Bonham, William B. Wilson, and John W. Westcott are hereby appointed the first board of directors,
who shall hold their office until their successors are elected
34 and duly qualified in such manner as may be provided by
the laws of said company, which said by-laws shall be established by the directors of said company, which by-laws may be altered and changed by a two-thirds vote of said directors, and said board of directors shall have the power of electing out of their number a president, secretary, and treasurer, and such other officers as the by-laws may provide for.

§ 5. The said company shall have full power and authority, by themselves or their agents or employees, to enter upon any lands belonging to individuals or corporations for the purpose of surveying, resurveying, examining, and locating a line for said railroad, or the branch thereof, and shall have full power to receive from individuals or corporations, by purchase, donation, or otherwise, any and all lands they may deem necessary for the track or tracks of said

road, or the branch thereof, not exceeding one hundred and fifty feet in width; also all lands they may deem necessary for the side tracks, turnouts, stations, water-tanks, depots, and other buildings and structures; also they may purchase, hold, or receive, as donations from individuals or corporations, all lands, and the
right of way thereto, upon which may be found stone,
35 gravel, wood, or coal, suitable for constructing, ballasting,
fencing, or operating said railroad or its branch, and for constructing or repairing the buildings, structures, or appurtenances of said railroad. Said company may take such conveyance of lands purchased or donated for the purposes of this section from individuals or corporations as may be agreed upon by the parties interested. In case of disagreement as to the right of way, price of any land or lands, or other privileges embraced in this section, the same may be condemned, taken, held, and used by said company for the purposes of this act in the manner provided for in the condemning of lands for right of way in an act entitled "Ar act to amend the law condemning right of way for purposes of internal' improvement," approved June 22, A. D. 1852.

§ 6. The said company shall have power to unite its railroad with any other railroad now constructed or which may hereafter be constructed, or this said company may purchase or receive by donation the corporate franchise, property, or privileges, or any part of either, of any other railroad company whose charter confers power to con-
struct a railway through or into Wayne county, upon such
36 terms as may be agreed upon by and between the companies,
or their successors or assigns, interested, and shall have power to build said railroad or its branch across any other railroad, highway, or water-course: Provided, That any railroad so crossed or intersected shall be restored to its former usefulness.

§ 7. The county court or board of supervisors (where such county has adopted township organization) of any county into or through which this road or its branch may pass is hereby authorized and fully empowered to donate to said company, as a bonus or inducement towards the building of said railroad or its branch, any sum not exceeding one hundred thousand dollars, and may order the clerk of the county court or board of supervisors of such county to issue bonds of the county to the amount donated; and such clerk of the county court or board of supervisors, as the case may be, of such county shall countersign and deliver such bonds so issued to the president or directors of said company, which said bonds may bear any rate of interest, not exceeding ten per cent. per annum, payable at maturity of the bonds, as hereinafter expressed, and yearly thereafter: Provided, That
no donation by the county court or board of supervisors
37 of any such county shall be of a greater sum than fifty thou-
sand dollars until the question of such larger donation shall have been submitted to the legal voters of such county at an election to be called, conducted returns made, canvassed, and published in the usual manner of calling, conducting, making returns, canvassing, and publishing special county elections, at which election each

voter shall vote a ticket, upon which is written or printed the words "For Donation" or "Against Donation;" and if a majority of the ballots cast at such an election be in favor of donation, it shall by the duty of the county court or board of supervisors of such county so voting to donate some amount, not less than fifty thousand dollars nor more than one hundred thousand dollars, to said company, and to order the issuing of bonds of the county, as hereinbefore provided, for the amount so donated, which bonds shall be made payable to the directors of said company, and may be in any denomination of not less than one hundred nor more than one thousand dollars each, at the discretion of the said county court so issuing the
same: Provided, That the bonds of any county so donated
38 and issued shall not mature nor become due or payable, nor
any of the interest accruing thereon, or upon any part thereof,
until the said company shall completed, or caused to be completed, so much of the line of said road or its branch as may be within the county so donating, or when some certain specified section or part of the road shall have been finished, as may be agreed upon between this company and county court or board of supervisors of the county making the donation, and each of said bonds shall declare upon its face the conditions upon which it is to become due.

§ 8. The county court or board of supervisors of any county authorized by the foregoing sections of this act to donate its county bonds to this company is hereby fully authorized and empowered to donate or grant, as a bonus or inducement, to said company any land or lands belonging to such county, and to make such conveyance, or agreement for conveyance, for such lands or mortgages upon the same, or deeds of trust to the same, not inconsistent with the provisions hereto, as may be agreed upon by and between such county court or board of supervisors of such county and this com-
pany: Provided, That no absolute conveyance of such lands so
39 donated shall be made by any such county court or board of
supervisors until the said company shall have fully completed
such part of the said road as may lay within the limits of such county so donating the same, or until some one or more of the sections into which this road is hereafter to be divided is completed and in running order; but any and all agreements for the conveyance of such lands or mortgages thereon, or deeds of trust thereto, or bonds for deeds to the same, may be made by any such county court or board of supervisors that may be deemed necessary to insure the absolute conveyance of such lands to this company when they have complied with the terms and conditions of said grant or donation.

§ 9. Any town in any county under township organization is hereby authorized and empowered to donate to said company any amount not to exceed thirty thousand dollars: Provided, That no such donation by any such town to said company shall be made unless the question of making such donation shall have been first submitted to the legal voters of such town at an election here-
after to be provided for: And provided further, That no do-
40 nation so made *made*, nor any part thereof, nor any interest

accruing thereon or upon any part thereof, shall be paid or become due or payable to said company until said company, or its assigns or employees, shall have completed their said railroad, or some certain part of said road or its branch, as may have been agreed upon by the contracting parties.

§ 10. No such election for the purpose of submitting the question of making a donation by any such town authorized by section nine of this act to donate to this company shall be held until the directors of said company shall have filed a proposition to the inhabitants of said town with the county clerk of the court wherein such town is situate, and a copy of the same with the clerk of said town, and, if there be a newspaper published in such county, said proposition shall be published in full in the same, whereupon it shall be the duty of the clerk of such town to post up written or printed notices of the time and place of holding such election in at least ten public places in such town, together with a copy of said proposition at least twenty days before the day for hold-
41 ing such election, at which election the legal voters of such
township shall vote for or against such proposition, and if a majority of said town shall so certify the same to the clerk of the county court of the county wherein the town is situated, and such county clerk shall, upon the application of the company, after the donation so voted by any such town shall have become due or payable under the terms and conditions of the proposition upon which said election was ordered, compute and assess upon all the taxable property in said town an amount sufficient to pay such donation, or any part or installment of the same so then being due and payable, which taxes so assessed shall be collected as other taxes, and the taxes so collected shall be paid to the treasurer of said company And the election herein provided for shall be held, canvassed, and returned as other regular town elections.

§ 11. Any incorporated city or town through or by which said railroad or its branch may run is hereby authorized and empowered to make donations to said company in any sum not exceeding ten thousand dollars, on the same terms, propositions, condi-
42 tions, and under the same restrictions as provided for towns
in sections nine and ten of this act.

§ 12. Said railroad company is hereby authorized and empowered to receive from any and all individuals any donation of any kind that such individuals desire to make, whether of real or personal property, money, or promises to pay money, bonds of the United States or of any State, or of any incorporation whatsoever, upon such time, terms, and conditions as may be agreed upon between said company and such donor, and for the insuring to said company of any such donation, when they have complied with the terms and conditions upon which such donation was made, said company is fully authorized and empowered to receive and hold any deeds of conveyance for real or personal property, rights, or franchises, or any bonds for deeds, or deeds of trust, or any other indentures, obligations, or writings of any kind whatsoever that may be deemed necessary; or said company may receive and hold any agreements,

bonds, or instruments that may be deemed necessary to secure the
transfer and delivery of any bonds, valuables, or securities, or
43 to enforce the issuing of bonds or securities when donated.

§ 13. Said company, by its board of directors, shall have power to appoint a trustee to take and hold any and all the property, real, personal, or mixed, or such part as may be agreed upon, and by order of the said board of directors, or by virtue of any contract previously made by them, may transfer the same to any individual or company, corporation, or body politic, with whom said railroad company may contract to build or assist in building said road, or any part thereof, or the branch of the same; and the title to any and all of such property shall vest in any such individual company, corporation, or body politic that said railroad shall contract with when the terms, conditions, and contingencies of such contract shall have been fully complied with, or said trustees may take and hold any and all of said company's property, real, personal, or mixed, as security or indemnity for any moneys borrowed or negotiated for by said company.

§ 14. Said company shall have power to borrow money not exceeding in amount the value of the donations, subscriptions, franchises,
and other property of all kinds, and for any money so borrowed
44 they may pay any rate of interest not exceeding ten per centum
per annum. And said company may secure the payment of money so borrowed by mortgages upon, or deeds of trust for, or by making in any manner pledges or securities of any of the franchises, donations, subscriptions, or property of any kind belonging to said company. And said company is fully authorized and empowered to issue bonds based upon their property rights, credits, franchises, donations, or subscriptions, and may transfer, sell, assign, or mortgage or dispose of such bonds so issued for money, or to secure the payment of money borrowed by said company, or to procure any property necessary to aid the building or operating their road, or the branch thereof; said bonds so issued shall be of any denominations not less than one hundred dollars, nor more than one thousand dollars, and may run for any term not more than twenty years and bear any rate of interest not exceeding ten per centum per annum, and shall be legally executed in the manner to be prescribed by the by-laws of the said company.

§ 15. Said railroad shall be divided into sections of not less than
five miles each, and shall be numbered and designated as the
45 board of directors shall by the by-laws provide.

§ 16. Said company shall organize under the provisions of section four of this act within one year from and after the passage of this act, and shall commence the construction of said railroad in good faith within three years, and shall complete the same within twenty years.

§ 17. This act shall be a public act, and shall be in force from and after its passage.

Approved February 25, 1867.

That said charter was amended by an act of said Legislature, approved February 24th, 1869, as follows:

*An Act to Amend an Act Entitled "An Act to Incorporate the Illinois Southeastern Railway Company.*

SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the corporation heretofore organized and known as "The Illinois Southeastern Railway Company," by virtue of an act approved February 25, 1867, shall
46 have all the powers, rights, privileges and immunities which
have been heretofore granted, and such other powers, rights, privileges, and immunities as are hereinafter provided for, and all subscriptions to the capital stock, or donations, or gifts to said railway company, whether made by individuals, townships, counties, or corporations, shall be, and are by this act, legalized; and the said company is hereby empowered and authorized to collect and use the same upon the conditions as donated and subscribed.

§2. Whereas doubts exist as to the power and authority of the persons named in the first section of the act to which this is an amendment to associate other persons with them, by vote or otherwise than by subscriptions to the capital stock of said company, or to increase the number of the directors, in pursuance of the fourth section of said act, or to elect a board of directors to succeed the first board appointed in and by said fourth section: Be it further enacted, That the acts of said persons so named in said first section of said act, and of any board of directors elected by them and their associates, admitted as members of said company by vote or otherwise, done in furtherance of the general purpose and design of said
47 act any time prior to the election of a board of directors by
the stockholders in said company, and of their qualifications as such directors, shall be held to be legal and valid acts of said company, as fully as if the same had been done by directors duly elected by stockholders.

§3. And whereas doubts exist as to the time when the interests upon the bonds to be issued and delivered to said company under the provision of section seven (7) of said act is to begin to run, and as to when said bonds are to finally become due and payable to any holder thereof: Now, therefoie, be it further enacted, That the true intent and meaning of said section is, and it is hereby so declared to be, that said bonds so to be issued shall not be delivered to said company, nor become binding obligations of the several counties issuing the same, nor shall interest be payable thereon, until the said company shall have completed, or caused to be completed, so much of the line of said road as may be within the county so donating, or when some certain specified section or part of the road shall
48 have been finished, as may be agreed upon between said com-
pany and the county court or board of supervisors, as the case may be, of the county making the donation; then and in all such cases an amount of such bonds may be issued proportioned to the length of such completed section or sections, and the county courts

or boards of supervisors of said counties respectively may make and issue such bonds, payable to the directors of said company or bearer, or otherwise, so as to make them negotiable by delivery, having such time to run and bearing such rate of interest not exceeding ten per cent. per annum, payable annually or semi-annually, in or out of the estate, as may be agreed on by them and said railway company, and conformable to the terms upon which said donations were or may be respectively voted for in said counties, the interest to be payable to bearer, according to interest coupons attached to said bonds.

§ 4. Whenever said railway company shall so demand the county courts or boards of supervisors, as the case may be, of said counties respectively, and the proper authorities of the several townships shall cause the bonds so provided for, with interest cou-
49 pons attached, to be prepared and executed and placed in the
hands of a trustee to be agreed upon by said county courts or boards of supervisors, who shall deliver said bonds to said railway company or its assigns, when and as the conditions upon which said donations were respectively voted for shall be fulfilled, and the coupons for all interest past due at the time when said company becomes entitled to such bonds shall be detached and cancelled by said trustee, and the interest for the current half year or year so arranged as that said counties shall only pay interest on said bonds from the date at which said railway company were entitled to receive the same.

§ 5. And whereas certain townships in Wayne and Clay counties have voted donations to said railway company, said townships are hereby authorized and empowered to issue township bonds for the amount so donated, without submitting the propositions again to be voted upon, said bonds to be issued in sums not less than one hundred nor more than one thousand dollars each, with interest
50 coupons attached, drawing interest at the rate of ten per cent.
per annum, payable semi-annually at the county treasurer's office in each county where such townships are located, said bonds to be payable in five years or any time thereafter not exceeding twenty years, at the option of the townships, and said bonds to be signed by the supervisors thereof, or by the supervisor or supervisors of the district wherein such township is located, and to be countersigned by the township clerk of the respective townships; and said bonds to be delivered, properly executed, to the president of said railway company when the conditions are complied with as contained in election notices and propositions submitted to and voted upon by the people of said townships; and said townships shall each, by its proper corporate authorities, provide in a due time, by a levy and collection each year of a sufficient tax on its assessed property, to pay the interest on its bonds, as it accrues half yearly as aforesaid, and ultimately to provide for the principal of said bonds at maturity: Provided, That said bonds shall be placed in the hands of a trustee on the demand of said railway company, as hereinafter pro-
51 vided: And also provided, That such townships may deter-
mine by a vote of their electors, at any regular or special

town meeting or election, whether they will issue bonds or not in payment of the donations heretofore voted to said company.

§ 6. Be it further enacted, That all contracts made by towns, cities, and counties into, through, or near which the Illinois Southeastern railway shall run, whereby, as an inducement for the construction of said railway, such towns, cities, or counties agreed, upon the completion of certain portions of said railway, to sell said company, at a nominal price, the stock of said company, for which said towns, cities, or counties, by a vote of their electors, had theretofore subscribed and agreed to issue bonds in payment thereof, thereby, in effect, agreeing to make a donation to said company certain amounts of the bonds of such towns, cities, or counties as an inducement for the construction of said railway, are hereby declared to be valid and binding upon such towns, cities, and counties, and shall be carried into effect in good faith by the same, and all orders for, and notices
of, elections, and elections, and returns of such elections, in
52 respect to such subscriptions of stock to said company in any
such towns, cities, and counties, are hereby declared valid
and binding upon such towns, cities, and counties.

§ 7. That the said Illinois Southeastern Railway Company shall have power and the right to connect with the Chicago branch of the Illinois Central railroad at any point not north of the city of Effingham, and may continue its railway in a northwestwardly direction to any point on the Mississippi river not north of Rock Island and not south of Quincy, and to build branch roads, not to exceed thirty miles in length, with one or more tracks, to any towns or places in the several counties through which said road may pass, and towns and places in adjoining counties to those through which the main trunk runs, and continue such branches, if desired, to connect with other lines of railroads; and such extension of main trunk and branches to have all the powers, rights, and privileges as have been heretofore granted by the act of incorporation of this company or by this act: Provided, That said company shall not construct
any such branch road until the main line of said road
53 shall be completed from the Ohio river to some point on the
Chicago branch of the Illinois Central railroad. Said company shall have power to unite, connect, or consolidate its railroad with any other continuous line of railroad constructed, or in course of construction, or which may hereafter be constructed in this State, upon such terms as may be agreed upon between the companies so uniting, connecting, or consolidating, and for that purpose full power is hereby given to said company to make and execute such contracts with any other company as will secure the ob-ects of such connection or consolidation. And the said company may furthermore lease, purchase, or receive as a donation any other road, or part of road, either wholly or partially constructed, which may constitute or be adopted as part of its main line or branches, and by such lease, purchase, or donation it shall acquire and become vested with all the rights and franchises pertaining to such road or part of road so leased, purchased, or donated, in the right of way, donations, constructions, maintenance, and working thereof: Provided, That such

consolidations shall be subject to the general railroad law of 1849.

54 § 8. The said company shall have the right to construct a line or lines of telegraph along its railway and branches, and to maintain and operate the same, and shall have all the powers and privileges, and be subject to all the liabilities, prescribed by an act in relation to telegraphs, enacted by the State of Illinois, and approved February 9, 1849, and an act or acts amendatory thereof or supplemental thereto.

§ 9. It shall be lawful for the incorporate authorities of any incorporate city or vil-age through which said railway shall be located to donate or lease to said railway company as a right of way the right to lay a single or double track through said city or incorporated village, or any portion of the same, or any street or highway that the said railway company shall elect for that purpose, except at the option of the said railway company and corporate authorities of such towns or cities.

§ 10. That any village, city, county, or township organized under the township organization law, or any other law of this State, along or near the route of said railway or its branches, or that are in anywise interested therein, may in their corporate capacity sub-
55 scribe to the stock of said company, or make donations to said company to aid in constructing and equiping said railway: Provided, That no such subscriptions or donations shall be made until the same shall be voted for as hereinafter provided; that whenever twenty legal voters of any such city, village, county, or township shall present to the clerk thereof a written application, requesting that an election shall be held to determine whether such village, city, county, or township shall subscribe to the capital stock of said company or make a donation thereto to aid in building or equiping said railway, stating the amount, and whether to be subscribed or donated, and the rate of interest and times of payment of the bonds to be issued in payment thereof, such clerk shall receive and file such application, and shall immediately proceed to post written or printed notices, calling an election to be held by the legal voters of such village, city, county, or township; which notice shall be posted in ten of the most public places of such village, city, county, or township for thirty days preceding an election, and said notices shall state fully the objects of such election; and such election shall be held and conducted and returns thereof made as general elections
56 provided by law in this State and as provided by the charters of any such village or city: Provided, That at any election held under the provisions of this act it shall not be necessary to cause a registration of the voters of such villages, cities, counties, or townships; and if a majority of the votes cast at such election shall be in favor of such subscription or donation then the corporate authorities of such village, city, county, or township organized under the township organization laws of this State, the supervisors of such township shall subscribe to the capital stock of said company or donate thereto, as shall have been determined at such election, the amount so voted at such election, and shall issue the bonds, with

interest coupons attached, of such village, city, county, or township to said railway company in such denominations as said railway company may designate, said bonds drawing interest at a rate not exceeding ten per cent. per annum, and the interest on said bonds to be paid semi-annually, and said bonds to be paid in twenty years from the date of this issue, with the privilege reserved to the said villages, cities, counties, or townships of paying said bonds at any time after five years from the date of their issue, and said bonds to be signed in
57 case of a village by the chairman of the board of trustees thereof,
in case of a city by the mayor thereof, in case of a county by the county judge, or the chairman of the board of supervisors thereof, and in case of a township by the supervisors thereof, and in all cases to be countersigned by the clerk of said village, city, county, or township. And any such village, city, county, or township subscribing or making donation to such railway, as aforesaid, shall, by its proper corporate authorities, annually thereafter levy and collect a sufficient tax on its assessed property to pay the interest on its bonds issued as aforesaid as the interest becomes due, and provide in due time to pay the principal at maturity.

§ 11. Whenever the bonds issued by any village, city, county, or township in pursuance of this act shall not be promptly paid at the time they fall due, or the interest thereon shall not be paid promptly when due, the clerk of such village, city, county, or township, on the application, in writing, of any creditor to whom such arrears of interest or principal shall be due, shall assess the full amount of such interest and principal so due from such village, city, county, or township, and place the same upon the
58 proper tax-lists, to be collected with the other taxes of such
village, city, county, or township: Provided, That not more than three per cent. of taxes on the assessed valuation be levied in any one year.

§ 12. That when payment of subscription to the capital stock of said company, or payments for donations to said company, have been or shall be made by villages, cities, counties, or townships under any act authorizing such subscription or donation to be made, all such bonds issued or negotiated by the proper authorities of such villages, cities, counties, or townships, and appearing regular on the face thereof, shall, in the hands of said company, or any other *bona fide* holder thereof, be deemed and taken in al- courts and elsewhere as *prima facie* evidence of the regularity of ever-thing required by the several acts in relation to issuing of said bonds, or by any other act to be done preliminary to the issuing and negotiation of said bonds.

§ 13. Whereas in section seven of the act to which this is an amendment it was provided that any bonds in payment of any donations made by counties to said railway company that each of said bonds should declare upon its face the conditions upon
59 which it should become due; and whereas the election notices
heretofore issued by the proper authorities of any such counties making donations to said railway company, as well as the act to which this act is an amendment, contains certain conditions required to be fulfiled by said railway company before the bonds of

such county should become due and payable, and which conditions were by such notices, as well as by the act to which this act is an amendment, required to be inserted in the face of such bonds to be issued by such counties, therefore, be it further enacted, that upon a full and complete performance by said company of all the conditions upon which said bonds were to become binding obligations of the counties issuing the same it shall be the duty of the county court or the board of supervisors, where such county is under township organization, of the respective counties making such donations to enter an order upon their records at a regular or special term of their court, directing the clerk of such court to certify, over his official seal, upon the back of each of said bonds so issued, in language
as follows, viz: "All of the conditions upon which this bond
60 was to become a binding obligation of the county of ——
have been complied with."

§ 14. That the holders of twenty thousand dollars, or upwards, of the bonds of any county or city issued in pursuance of this act, or the act to which this is an amendment, may at any time file the same with the auditor of public accounts for registration and for collection and payment of interest and principal, and all the provisions of "An act relating to county and city debts, and to provide for the payment thereof by taxation in such counties and cities," approved February 13, 1866, so far as the same relates to registration, collection and payment of interest according to the tenor of said bonds, shall be in force and be applied for the benefit of all such bonds so registered, and whenever the proper county or city authorities shall provide for payment of principal of such bonds, the amount annually to be raised for that purpose shall be certified by the proper authorities of such county or city to the auditor of public accounts, and the provisions of said act shall apply to the collection and payment of the principal of said bonds, as so provided by said county or city
authorities. Nothing in this section shall be constructed
61 to change the rate of interest or payment of principal of
said bonds, as provided on their face, or in anywise to impair the rights of the holders of said bonds to collect either interest or principal, in case of any default in payment of the same.

§ 15. The board of directors of said company, after said railway is completed from the Ohio river to the Illinois Central railroad, may consist of not less than five nor more than thirteen; and the number may be changed at any regular meeting of the stockholders, and a majority of the board of *the* directors shall constitute a quorum for the transaction of business; and said directors may open books for the subscription of stock at such time and under such regulations as they may determine.

§ 16. This act shall be deemed a public act, and shall be in force from and after its passage.

Approved February 24th, 1869.

### *Act of General Assembly State of Illinois Amending Act Incorporating Illinois Southeastern Railway Co.*

An act supplemental to an act entitled "An act to amend an act to incorporate the Illinois Southeastern Railway Company," passed at the present session of the General Assembly.

62 SECTION 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That section numeleven (11) of the act to which this is a supplement be, and the same is hereby, repealed.

§ 2. This act to take effect and be in force from and after its passage.

Approved February 24, 1869.

3rdly. That on the 1st day of January, 1871, said town issued and delivered to the officers of the Spingfield & Illinois Southeastern Railway Company, a company formed by consolidation with the Illinois Southeastern Railway Company, the bonds and coupons now in controversy, of which the attached are true copies, marked Exhibits "B" & "C," and are to be as evidence in lieu of the originals.

4th. That said bonds and coupons were issued by said town by virtue of the power (if any) contained in the acts aforesaid.

Approved February 25, 1867, and February 24th, 1869.

5thly. That afterwards said bonds and coupons now in controversy came to plaintiff through mesne transfers from said Springfield & Southeastern Railway Company.

63 6th. That said bonds in controversy were registered in the State auditor's office pursuant to the affidavit therein filed, a true copy of which is hereto attached, marked Exhibit "D," and is to be evidenced in this suit for what it is worth.

7th. That Exhibit "E," hereto attached, contains copies of the order of the council at Enfield appointing judges of election and returns of the vote at the election held June 11th, 1870, and is evidence in this cause, and that said election was the only one held in relation to said donation.

8th. That at the June term, A. D. 1880, of this court judgment for the plaintiff against the defendant herein was rendered upon coupons then due, detached from the same bonds from which the coupons in evidence in this suit were taken.

It is finally stipulated by the parties herein that the defendant may introduce in evidence any testimony and make any defence under the general issue in this suit that would be admissible if properly pleaded.

64 It is admitted by plaintiff in this suit that the Enfield town bond, represented by Post in the case of Welch *et al.* *vs.* Post, 99 Ill's, p. 471, was one of the series of seven bonds now in controversy in this suit; but in making said admission plain-

tiff disclaims any knowledge of which one it was or any connection with said suit.

T. C. MATHER,
*Attorney for Plaintiff.*
C. H. PATTON AND
PATTON & HAMILTON,
*Attorneys for Defendants.*

## EXHIBIT "A."

*Bond of Town of Enfield.*

UNITED STATES OF AMERICA.

State of Illinois. $1,000.

Enfield railroad bond, ten per cent. interest.

Know all men by these presents that the town of Enfield, in the county of White, and State of Illinois, acknowledges itself to owe and be indebted to the Springfield and Illinois Southeastern Railway Company, or bearer, in the sum of one thousand dollars, which sum the said town promises to pay at the First National Bank of Shawneetown, Illinois, on the first day of January, A. D. 1891, the said town reserving the right to pay this bond at any time after five years from the date of its issue, with interest at the rate of
65 ten per centum per annum, payable semi-annually on the first days of July and January of each year on the presentation and surrender of annexed coupons.

This bond is one of a series of bonds issued by said town to aid in the construction of the Springfield and Illinois Southeastern railway, in pursuance of the authority conferred by an act of the General Assembly of the State of Illinois, entitled "An act to incorporate the Illinois Southeastern Railway Company," approved February 25, 1867; and "An act amendatory thereof, approved February 24, 1869;" and an election of the legal voters of the aforesaid town held on the 11th day of June, 1870, under the provisions of said act.

In witness whereof the said Town of Enfield has caused these presents to be signed by its chairman and countersigned by its clerk this first day of January, 1871.

[Seal Town of Enfield.]

M. A. MILLER,
*Chairman.*

W. H. JOHNSON, *Clerk.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *March 24th,* 1871.

I, Charles E. Lippincott, auditor of public accounts of the
66 State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts af counties, townships, cities, and towns," in force April 16, 1869.

In testimony whereof I have hereunto subscribed my name and affixed the seal of my office the day and year aforesaid.

[AUDITOR'S SEAL.] C. E. LIPPINCOTT,
*Auditor P. A.*

EXHIBIT "B."

Town of Enfield, county of White, State of Illinois, will pay to bearer fifty dollars at the First National Bank of Shawneetown, Illinois, on the first day of January, 1883, being six months' interest on railroad bond No. —.

M. A. MILLER,
*Chairman.*

EXHIBIT "C."

*Certificate of Town of Enfield for Registration of its Bonds.*

STATE OF ILLINOIS, COUNTY OF WHITE,
ENFIELD, *February 11th*, 1871.

To the auditor of public accounts of the State of Illinois, Springfield, Illinois.

67 SIR: I herewith transmit to you for registration in your under the provisions of the act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16th, 1869, the following bonds, being of $1,000.00 each and seven in number, dated January 1st, 1871, amounting to seven thousand dollars ($7,000), payable on the first day of January, 1891, and bearing interest at the rate of ten per centum per annum, payable semi-annually. These bonds are issued by the town of Enfield, in the county of White and State of Illinois, to the Springfield & Illinois Southeastern Railroad Company, under and by authority of the provisions of an act to incorporate the "Illinois Southeastern Railway Company," approved February 25, 1867, and an act amendatory thereof, approved February 24, 1869; and I, as chairman or president of said town council, do hereby certify that all the preliminary conditions in the act "in force April 16th, 1869," required to be done to authorize the registration of these bonds, and to entitle them to the benefits of the said
68 act last referred to, have been fully complied with, to the best of my knowledge and belief.

M. A. MILLER,
*President of the Town Council.*

Subscribed and sworn to by the said Mark A. Miller, before me, this 14th day of February, A. D. 1871.

[NOTARIAL SEAL.] W. H. JOHNSON, *N. P.*

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *July 27th*, 1883.

I, Charles P. Swigert, auditor of public accounts of the State of Illinois, do hereby certify that the foregoing and annexed instrument is a true, full, and correct copy of certificate of M. A. Miller as president of the town council of the town of Enfield, White Co., Ill., in regard to registration of bonds issued by said town to the

Springfield and Illinois Southeastern Railroad Co. now on file and forming part of the records of this office.

In testimony whereof I hereunto subscribe my name and affix the seal of my office, at Springfield, the day and year first above written.

[AUDITOR'S SEAL.] CHAS. P. SWIGERT,
*Auditor Public Accounts.*

69 EXHIBIT "E."

ENFIELD, ILLINOIS, FRIDAY EVENING, *June 10th*, 1870.

The town council met pursuant to call.

Members present: Messrs. Miller, Gowdy, and McClain.

On motion, the following order was adopted:

Ordered, That James E. Willis, John T. Coker, and George Long be, and they are hereby, appointed judges of the elections to be held in the town of Enfield on the 11th day of June, 1870, and they are hereby empowered to appoint two clerks of said election, and to conduct the same according to law and the ordinances of said town.

On motion, the town council adjourned to meet Monday morning, the 13th inst., at 8 o'clock a. m.

M. A. MILLER, *P. C.*
W. H. JOHNSON,
*Town Clerk.*

I certify that the above is a true copy of the record in my office. Given under my hand and seal of the village of Enfield, this 4th day of August, A. D. 1883.

[Seal, Village Enfield.]

J. T. VAUGHT,
*Village Clerk.*

ENFIELD, ILLINOIS, *June 13th*, 1870.

The town council met pursuant to adjournment.

Members present: Mr. Miller, president, and Messrs. Gowdy, McClain, and Akers.

70 The minutes of last three meetings were read and approved.

The following election returns were received, to wit:

At an election held in the corporate town of Enfield, in the county of White and State of Illinois, on Saturday, the 11th day of June, in the year of our Lord one thousand eight hundred and seventy, for the purpose of determining whether said town of Enfield will donate the sum of seven thousand dollars to the Springfield and Illinois Southeastern Railway Company, &c., the following result was obtained, viz:

For donation, received sixty-four (64) votes.

Against donation, received one (1) vote.

(Signed) JOHN T. COKER,
JAMES E. WILLIS,
GEO. LONG,
*Judges of the Election.*
JOHN H. BOYER,
JAS. DONNELLY,
*Clerks of the Election.*

STATE OF ILLINOIS, *Village of Enfield:*

I certify that the foregoing is a true copy of minutes in my office. Given under my hand and the seal of the village of Enfield, this 4th day of August, A. D. 1883.

[SEAL.] J. T. VAUGHT,
*Village Clerk.*

(Endorsed:) Filed August 29, 1885. J. A. Jones, clerk.

71 And afterwards, to wit, on said twenty-ninth day of August, of the year last aforesaid, came again said defendant, by its attorneys, and filed in the clerk's office of said court its bond on writ of error herein, which said bond on writ of error is in the words and figures following, to wit:

*Bond on Writ of Error.*

In the Circuit Court of the United States for the Southern District of Illinois.

C. N. JORDON *v.* TOWN OF ENFIELD.

Assumpsit.

Know all men by these presents that we, The Town of Enfield, as principal, and William R. Miller, as surety, are held and firmly bound unto C. N. Jordon in the sum of five hundred dollars ($500.00) lawful money of the United States of America, to be paid to the said C. N. Jordon, his heirs, executors, or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

72 Sealed with our seals and dated this 28th day of August, A. D. 1885.

Whereas the above-named Town of Enfield hath prosecuted a writ of error to the Supreme Court of the United States to recover the judgment rendered in the foregoing extitled suit by the circuit court of the United States for the southern district of Illinois, now, therefore, the condition of this obligation is such that if the said Town of Enfield shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[L. S.] THE TOWN OF ENFIELD,
By J. M. PEARCE, [SEAL.]
*President of Board of Trustees.*
JOHN M. NEWMAN, [SEAL.]
*Clerk of Board of Trustees.*
WILLIAM R. MILLER. [SEAL.]

STATE OF ILLINOIS,
*White County,* } *ss.*

William R. Miller, being by me first duly sworn according to law, says that he is the person who signed the foregoing bond as

73 surety thereto, and that affiant has real and personal property in his own name unencumbered and subject to execution exceeding in value five hundred dollars, and further saith not.

WILLIAM R. MILLER.

Subscribed and sworn to before me this 28th day of August, 1885.

[L. S.] JOHN N. WILSON, *N. P.*

Approved. S. H. TREAT,
*Dist. Judge.*

(Endorsed): Filed August 29, 1885. J. A. Jones, clerk.

UNITED STATES OF AMERICA, }
*Southern District of Illinois,* } *ss:*

I, J. A. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois, do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain cause wherein C. N.
74 Jordan is plaintiff, and The Town of Enfield is defendant, as truly and completely as the same appears of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at Springfield, in said district, this thirtieth day of September, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and tenth year.

[The Seal of the Circuit Court of the United States for the South'n Dist. Ill.]

J. A. JONES, *Clerk.*

75 Supreme Court of United States.

THE UNITED STATES OF AMERICA, *ss:*

To C. N. Jordan, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in clerk's office of the circuit court of the United States for the southern district of Illinois, wherein The Town of Enfield, in the State of Illinois, is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment in the said suit of error mentioned should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Hon. Samuel H. Treat, district judge of the United States for the southern district of Illinois, at Springfield, in said district, this twenty-ninth day of August, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and tenth year.

S. H. TREAT,
*District Judge U. S., South. Dist. Ill's.*

I hereby accept service of the above citation this 29th Sept., 1885.

T. C. MATHER,
*Att'y for Def. in Error.*

[Endorsed:] Town of Enfield, plaintiff in error, *v.* C. N. Jordan. Citation.

76 And now comes the said Town of Enfield, the plaintiff in error, by C. H. Patton, *his* attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. The court erred in holding that the said Town of Enfield had power to vote and issue the bonds and coupons in controversy under the acts of the General Assembly of the State of Illinois following, to wit:

"An act to extend the corporate powers of the town of Enfield," in force March 15, 1869. Private Laws of 1869, vol. 4, page 277.

And "An act to incorporate the Illinois Southeastern Railway Company," in force Feb'y 26th, 1867. Private Laws of Ill., 1867, vol. 2, p. 750.

And "An act to amend an act entitled an act to incorporate the Illinois Southeastern Railway Company," in force Feb'y 24th, 1869. Private Laws of Ill., 1869, vol. 3, p. 308.

And more particularly in holding that such power existed under section 10 of the last-named act.

77 Second. The court erred in holding that said town was estopped from making its defence herein, because of the litigation heretofore had between it and the plaintiff in the circuit court from which this case comes here, upon the pleadings and facts stipulated and judgment rendered therein, all as shown in Exhibit "A" to the record herein.

Third. The court erred in holding that in case there was power in said town under said laws to vote and issue the bonds and coupons, yet that one of said bonds and the coupons thereto belonging, which had been litigated in the State courts of Illinois by one Post, as shown in said Exhibit "A," was not void in the hands of the defendant in error by reason thereof.

Fourth. The court erred in rendering judgment for the plaintiff below.

Fifth. The judgment is contrary to the law and the evidence.

Wherefore the plaintiff in error prays that said judgment be reversed & remanded.

By C. H. PATTON,
*Att'y for Plaintiff in Error.*

Endorsed on cover: S. Illinois C. C. U. S. No. 1041. The Town of Enfield, plaintiff in error, *vs.* C. N. Jordan. Filed October 9, 1885.

119680

## SUPREME COURT OF THE UNITED STATES.

### October Term, 1885.

No. 1041.

THE TOWN OF ENFIELD, PLAINTIFF IN ERROR,

*vs.*

C. N. JORDAN, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

# BRIEF OF PLAINTIFF IN ERROR.

CHARLES H. PATTON,
ATTORNEY FOR PLAINTIFF IN ERROR.

*Filed*.............................................................*188*.......

"REGISTER" PRINT, MT. VERNON, ILL.

# SUPREME COURT OF THE UNITED STATES.

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*VS.*

C. N. JORDAN, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF ILLINOIS.

# BRIEF OF PLAINTIFF IN ERROR.

### STATEMENT OF CASE.

The Plaintiff in Error, in White county, Illinois, was incorporated by special act of the legislature of Illinois, March 15th 1869, under the name of the "*Town of Enfield.*" The name "*village*" was then unknown to the general laws of Illinois, it never having been named in any general or special law from the organization of the State down to date, so far as Plaintiff can ascertain.

This charter conferred the usual limited powers of a town charter with no prpvision for the issue of interest bering securities for any purpose whatever.

February 25th, 1867, the Illinois Southeastern Railroad Company was chartered, and by the 7th section of this charter (Record p. 15) counties were authorized to *donate* in aid of this Railway and to pay their donation in county bonds. By sections 9 and 10 Townships were also authorized to make such *donations*, but to be paid only by taxation. And by section 11 (Record p. 17) "Any incorporated city or town" was also authorized to make such *donations*, but to be paid only by the levy and collection of taxes as in the case of townships.

On the 24th of February, 1869, an act amendatory of the said charter of the Ill. S. E. R. R. Co. was passed by the General Assembly of Illinois, by the third section of which the legislature construe the meaning of section 7 of the original charter as to when the county bonds therein provided for with their interest shall become due, but nothing is said about "Town Bonds." (Record p. 19.) And by section 10 (Page 22, Record) "any village, city, county or township organized under the township organization law," &c., was authorized to subscribe to the Capital Stock of said Railway Company, *or make donations to said Company*, and under conditions therein prescribed to pay such subscription "or *donation* in the bonds of such village, city, county or township," &c., "incorporated towns" which were mentioned in section 11 of the original charter being omitted entirely in this amendatory charter.

On the 11th day of June, 1870, said "Town of Enfield" voted to *donate* the sum of $7,000.00 to said Illinois Southeastern Railway Company, (see order of town council, Record p. 28), and this *donation* was paid by the issue and delivery of the bonds in controversy. On the 1st day of January, 1871, (see "stipulation" Record p. 25), under the *supposed* power given by said railway charter and the amendment thereto as aforesaid, certain citizens of said "Town of Enfield" filed their bill in equity in the Circuit Court of White county, Illinois, alleging the void character of these bonds for the want of power in an "incorporated town" to issue them, and decree was taken by default at the April term, 1877, of said White county circuit court. But this decree was opened at the October term, 1879, to let in one Augustus T. Post, a citizen and resident of New York, to make his defence, he being the owner of one of the said bonds. A final decree was in time rendered and the same taken by writ of error to the Supreme Court of Illinois, where it was decided at the June term, 1881, the opinion being found under the title of

*Welch et. al. vs. Post, 99th Ill., 471.*

While that case was pending in the Supreme Court of Illinois, C. N. Jordan, the defendant in error here, took a judgment in the Circuit Court of the United States at Springfield, Illinois, at the June term, 1880, upon some of the coupons then due and detached from these bonds. And after that judgment was rendered the previously pending suit of Welch vs. Post, *supra*, was decided by the Illinois

Supreme Court construing this railway charter and the said amendatory act as not giving power to the "Town of Enfield" to vote and issue the bonds and perpetually enjoining the collection of taxes to pay the same. Afterwards when another batch of coupons matured the defendant in error brought suit in said Circuit Court of the United States for the Southern district of Illinois, a defence was made but judgment went for the plaintiff below, and the "Town of Enfield" brings the case to this court upon a certificate of division of opinion of the Judges of the Circuit Court.

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## BRIEF OF PLAINTIFF IN ERROR.

As this cause comes into this court upon a "Certificate of Division" it is assumed that no questions can be raised except those submitted in the "Certificate" of the Circuit Court, and these we will discuss in the order in which they appear in the record. These are

1st.—Whether the incorporated "Town of Enfield" in White County, Illinois, had power to vote and issue the bonds and coupons in controversy under any of the provisions of the following laws, to wit:

"An act to extend the corporate powers of the Town of Enfield" in force March 15th, 1869. Private Laws of Illinois, 1869, Vol. 4, p. 277.

"An act to incorporate the Illinois Southeastern Railway Company," in force February 26th, 1867. Private Laws of Illinois, 1867, 2nd vol. p. 750.

"An act to amend an act entitled 'An act to incorporate the Illinois Southeastern Railway Company,'" in force February 24th, 1869. Private Laws Illinois, 1869, vol. 3, p. 308.

2nd.—More particularly whether said Town had said power under section 10 of said last named act.

Under the first error assigned Plaintiff in Error makes the following points, to wit:

1st. The charter of the "Town of Enfield" confers no power to issue bonds for any purpose whatever. And it is settled law in

Illinois that to authorize a municipal corporation to issue bonds there must be express statutory power granted. There are no such implied powers.

*Welch vs. Post, 99th Illinois, 471.*
*Pitzman vs. Village of Freeburg, 92 Ill., 114.*
*Gaddis vs. Richland County, 92 Ill., 123.*
*Bissell vs. City of Kankakee, 64 Ill., 249.*

2d. The authority to issue bonds by a municipal corporation is an extraordinary power, and, if it is claimed, it must be shown by those who assert it, to be clearly and expressly given by the statute, because as to laws extending the powers of corporations or increasing the burdens of taxation, or statutes in derogation of common rights of property the rule of strict construction prevails.

*Chestnutwood vs. Hood, 68 Ill., 139.*
*People &c., ex. rel. vs. Hurlbut, 46 N. Y., 113.*
*People vs. Smith, 45 N. Y. 772.*
*Sharp vs. Spier, 4 Hill, 79.*
*Beaty vs. Knowles, 4 Pit., 172.*
*Vanhorns, lessee, vs. Dorrance, 2 Dall., 316.*
*Doe ex. dem, &c., vs. Shurm, 1 Blackf., 336.*
*Farrington vs. Morgan, 20 Wend., 207.*

3d. The act of 1867 incorporating the Illinois Southeastern R. R. Co., section 11 (page 17 of record), authorized "incorporated towns" &c., to make "donations" to be paid by levy of taxes only as provided in sections 9 and 10 of the same act for townships.

The act of 1869 amendatory of the charter of the Ill. S. E. R. R. Co. (§ 10, p. 22 of record), authorized cities, villages &c., to "subscribe to the stock of said company, or make donations to said company" upon a vote of the people; and the same section provides that the petition for an election shall state whether the aid given shall be "subscribed or donated," and provides that the subscription or donation may be paid in bonds. It is stipulated that these two acts contain the power to issue these bonds if any existed. (See "stipulation" page 25, record, "4th" clause.) And the recitals in the bonds show they were issued under these acts. (See copy of bond, page 20 of record.) And it will be conceded that such power exists by section 10 of the act of 1869, if at all.

It will be noticed that "incorporated *towns*" are omitted from the list of corporations named in said section 10, so that certainly clear, "*express power*" cannot be found as is required by the authorities heretofore cited upon that point, but we must look rather to construction or implication for the power; and this is all the answer needed to defeat these bonds.

But it is said that the word "village" used in the section includes "towns" and means the same thing. The answer to this proposition is, 1st, the Supreme Court of Illinois says they are not the same.

*Welch vs. Post, 99 Ill., 471.*

And 2d: because this "Town of Enfield" is incorporated under a special charter; its government is named "the town council," and it has exceedingly limited powers. (See Art. 4 of its charter, page 8 of record.) Only some 20 enumerations of powers of the most ordinary kind being found, while a "village" (which was entirely unknown to any general law of Illinois when this act of 1869 was passed, and up to 1872,) has all the powers of a city of five thousand inhabitants, and its government is named "the President and Board of Trustees, &c." (See §186, chap. 24, R. S. Ill., 1874, page 243.) And the powers of a city which a "village" possesses are far more ample than the "Town of Enfield" has under its charter; so much so as to require ninety-six enumerations thereof. (See §62, chap. 24, R. S. Ill., 1874, p. 218.) So that it is not reasonable to say that a "town" and "village" mean the same thing in Illinois because of their difference in character and powers as well as in name; and hence it cannot be said that authority to a "village" to issue bonds is a "*clear, express authority*" to a "town" to do the same thing.

In deciding as the Supreme Court of Illinois did in *Welch vs. Post*, that a "village" was not a "town," it was not overturning any former decisions or construction upon that question which the Defendant in Error might otherwise claim had become a part of the law itself at the time the bonds were issued, and that his contract obligations are thereby impaired because the State courts have made no previous decisions upon this question.

It was contended in *Welch vs. Post, 99 Ill., 471*, that the question had been settled by the Supreme Court of Illinois in *Martin vs. The People, 87 Ill., 524*, that a town and village were the same, but the court, in *Welch vs. Post*, decided that no such point was involved:

hence there has never been but one decision in Illinois on that point, and that was, that a town and village are not the same.

The Federal courts will follow the highest court in a State in the construction given by such State court to its own constitution and statutes.

*Tioga Railroad Co. vs. Blossburg, &c., R. R., 20 Wall, 137.*
*Fairfield vs. Gallatin Co., 100 U. S., 47.*
*Kibbe vs. Gallatin Co., 93 U. S., 674.*
*Town of South Ottawa vs. Perkins, 4 Otto, 260.*
*State R. R. Tax Cases, 2 Otto, 576.*
*Town of Elmwood vs. Marcy, 2 Otto, 289.*
*Wightman vs. Clark, 103 U. S., 260.*

And this is the case even where, as in this case, the State court has rendered its decision construing the State statute *after* the U. S. Circuit Court have made a prior decision construing it the other way:

*Moores vs. National Bank, 104 U. S., 625.*

And the Supreme Court of the United States will also recede from a former decision to follow the subsequent decision of the State court construing its own statutes. See

*Leffingwell vs. Warren, 2 Blackf., 599;*
*Fairfield vs. County of Gallatin, 100 U. S., 54;*
*citing:*
*Green vs. Neals, lessee, 6 Pet., 291.*
*Suydam vs. Williamson, 24 How., 427.*

If then, the power to issue bonds was not given under said section 10 of the act of 1869, the vote taken could only have authorized a donation to be paid by taxation as provided by section 11 of the said original charter of said R. R. Co., passed in 1867. But the power to vote a donation under either of the acts of 1867 or 1869 did not carry the power to pay the donation in bonds.

*Bissell vs. City of Kankakee, 64 Ill., 249.*
*Schaeffer vs. Bonham, 95 Ill., 368.*
*Lippincott vs. Town of Pana, 92 Ill., 24.*

And if these bonds were void for want of power to issue them then subsequent payment of interest is no ratification of them.

*Flack vs. Hughes, 67 Ill., 384.*
*Lippincott vs. Town of Pana, 92 Ill., 24.*
*Schæffer vs. Bonham, 95 Ill., 369.*

But there are other obvious reasons why these bonds are void: The first is: that they are *prima facie* void, because they were issued on the first day of January, 1871, (see stipulation, Record p. 25.) after the prohibitory article of the new constitution of Illinois was adopted on July 2, 1870. This court recognized the 2nd day of July, 1870, as the day upon which the new constitution of Illinois, so far as the separate article on the subject of railroad aid is concerned, took effect, in the case of

*Wade vs. Town of Walnut, 105 U. S., 1.*

The separate article upon the subject of Railroads is as follows:

"No county, city, town, township, or other municipality, shall ever become a subscriber to the capital stock of any railroad or private corporation or make donations to or loan its credit in aid of such corporation; *provided, however*, that the adoption of this article shall not be construed as affecting the right of any such municipality to make such subscriptions where the same have been authorized under existing laws by a vote of the people of such municipalities prior to such adoption."

*Const. 1870, R. S. Ill., 1874, page 82. Separate section 2.*

The Supreme Court of Illinois by an unbroken line of decisions has *held* that such municipal bonds issued since the above prohibition in the constitution are *prima facie* void; and the burden of showing that they were issued pursuant to some law clearly authorizing their issue is upon those who affirm their validity:

*Board Supervisors Jackson Co. vs. Brush, 77 Ill., 59.*
*Town of Middleport vs. Ætna Life Ins. Co., 82 Ill., 562.*
*The People vs. Jackson County, 92 Ill., 441.*
*Town of Prairie vs. Loyd, 97 Ill., 179.*
*Wright vs. Bishop, 88 Ill., 302.*

And the Supreme Court of the United States will look upon these bonds with the same suspicion, for it has said: "As a rule we treat the construction which the highest court of a State has given a statute of the State, as part of the statute itself."

*Weightman vs. Clark, 103 U. S., 260.*

We ask, then, where has the defendant in error, upon whom the burden rests, shown a "*clear and express power*" to issue these bonds?

But the next and absolutely unanswerable reason why these bonds are void was stated by the Supreme Court of the U. S. in the case of

*The Town of Concord vs. Savings Bank, 92 U. S., 625,*

where the court says, referring to the *proviso* in the "separate section" of the constitution of Illinois above quoted: "this article, in "our opinion, makes a clear distinction between *subscriptions* to the "capital stock of a railroad company, * * * and *donations* or loans "of credit to such corporations. *The latter are prohibited under all "circumstances.* The former may still be made if they have been "authorized by a vote of the people prior to the adoption of the con-"stitution. A very able and ingenious argument has been submitted "to us, aiming to show that in fact the article makes no such dis-"tinction, and that donations and subscriptions are put upon the "same footing; but *we cannot yield to it our assent.* No matter what "may have been the intention of the mover of the *proviso*, the intent "of the framers of the article, and of the people adopting it, must be "gathered from the article itself. There was reason for the distinct-"ion."

The above case seems to be upon "all fours" with the one at bar in all its details, for the controlling facts in the two cases were that "donations" and not "subscriptions" were voted in each case, and that in each case the adoption of the constitution in 1870 cut off or withdrew the power to make the "donations" before the same were made in 1871, or any binding contract therefor.

If there is any question that it was a "donation" instead of a "subscription" that was voted for and made in this case, we refer to the act of 1867 incorporating the Ill. S. E. R. R. Co., section 11, (Record p. 17.) where "donations" only are authorized by incorporated *towns;* and to section 10 of the act of 1869 amending the said act of 1867, where "villages" &c., (not towns) are authorized to subscribe or donate, (p. 22 printed Record), and also to the recitals in the bonds themselves which show that they are issued by virtue of said acts of 1867 and 1869, and the vote taken June 11th, 1870. (See copy of bond, p. 26 of printed record,) and "stipulation" (clause 4th, p. 25 of printed record.) And finally to the official record made by the Town Council of the "Town of Enfield" on the 13th day of June, 1870, (see page 28 of the printed record), when the Council met to canvass the vote taken June 11th, 1870, for the purpose as the same record shows, "of determining whether said town of Enfield" *will donate the* *sum of seven thousand dollars* to the Springfield & Illinois Southeastern Railway Company," &c.

This record and the statutes cited settle the question that the vote was *for a donation*, and that it was not completed by the issue of the bonds, nor by any contract or otherwise until the power to do so was withdrawn by the adoption of the constitution of 1870, as decided by this court in *Town of Concord vs. Savings Bank, 92 U. S., 625*, above referred to. Hence the same conclusion must be arrived at in this case, as in that, viz.: That the bonds are void.

The next question we will examine is the second error assigned:

"That the court erred in holding that said town was estopped from making its defence herein because of the litigation heretofore had between it and the plaintiff in the circuit court from which this case comes here, upon the pleadings and facts stipulated and judgment rendered therein, and as shown in 'Exhibit A' to the record."

Plaintiff in Error insists that it is not estopped by the former judgment between these parties, rendered at the June term, 1880, in favor of the Defendant in Error and against the Plaintiff in Error, upon coupons detached from these same bonds, as stipulated in the 8th clause of the "stipulation" on page 25, printed record; because, to make the former judgment binding as *res judicata* there must be complete identity of parties and subject matter of litigation.

*Cromwell vs. County of Sac, 94 U. S., 351.*

And if in the second suit there be, as in this case, a new and wholly different cause of action (a different lot of coupons are sued upon), and a defence based upon a materially new and different state of facts, then the former judgment is no estoppel.

*Cromwell vs. County of Sac, 94 U. S., 351.*
*Gould vs. Evansville, &c., R. R., 91 U. S., 526.*

But the pleadings in the former suit are not found in this record, and there is nothing by which this court can determine whether the former judgment can be shown to be an estoppel or not.

If we could go outside of this record some of the differences between the present and the former suit would be found to be:

1st—That this suit is upon a different cause of action, viz.: a different lot of coupons.

2d—That these coupons and the bonds from which they were detached have been, since the former suit, declared void by the Supreme Court of Illinois for want of power to issue them.

3d—That one of these bonds and the coupons of the same have been litigated in the State court by the holder thereof, who submitted to the jurisdiction of the State court for that purpose, and the same were held void in that suit.

4th—The declaration in this case contains the common counts, and it can not be known in the absence of proof under which count the present recovery was had.

5th—That the Defendant in Error is not a holder of the coupons for value, before maturity, without notice of defences thereto, because he had "notice" as to the coupons sued upon now, through being the holder of other past due coupons of the same bonds upon which the former judgment was rendered and which were "dishonored paper" in his hands before the purchase of the coupons now sued upon as alleged in the declaration.

In the first place, as it is conceded that this suit is upon a different cause of action from the former suit, and pleas being considered filed, it was then incumbent upon the Plaintiff in the court below to set up the former judgment by a replication if he wished to rely upon it as *res jusdicata*, and then prove his replication, and then the evidence would disclose whether the facts in the two suits were the same or not, and thus determine whether the replication set up a complete bar.

But the evidence not showing this, and there being no presumption, in the absence of proof, that the one judgment is a bar to the other, the judgment must be reversed,

In taking this position we do not take exception to or advantage of a want of "replication" though, because when it was "stipulated" (see clause "8th" on page 25 printed record) that the Defendant might give in evidence any matter of defence which would be admissible under appropriate pleas, we admit, whether true or not, that this included the right of the Plaintiff below, to have it considered that he had filed the appropriate replication. But this does not dispense with the necessity of having the evidence in the record on the part of the Plaintiff below to prove the identity of the subject matter or facts in the two suits to support his supposed replication of *res judicata*. Hence upon this point the judgment must be reversed, because in a second suit upon an entirely different cause of action nothing is *res judicata* but such questions as were *actually litigated* in the former suit.

*Russell vs. Place, 94 U. S,, 606.*

And if there is any uncertainty about the identity, there is no estoppel when pleaded and not conclusive when offered in evidence.

*Russell vs. Place, 94 U. S., 606.*
*Washington, &c., Packet Co. vs. Sickles, 24 How., 333.*

It is only where the second suit was upon the same cause of action that not only everything that actually *was* litigated, but also every other matter in any way connected that ought to have been, or might have been litigated, will be considered as having been settled and the former judgment in such case a bar.

*Cromwell vs. County of Sac, 94 U. S., 351,*

"It must appear by the record of the prior suit that the particular matter sought to be concluded was necessarily tried or determined—that is, that the verdict in the suit could not have been rendered without deciding that matter." * * *

*Russell vs. Place, 94 U. S., 608*, citing:
*Packet Co. vs. Sickles, 5 Wall., 580.*

Hence this court will not presume there was evidence which is not found in this record, in order to constitute the former judgment an estoppel here. That must affirmatively appear in the Record or be shown *aliunde*.

*Russell vs. Place, 94 U. S., 606.*

But since said former judgment was rendered, the Supreme Court of Illinois has construed said section 10 of that identical statute under which it is claimed there was power to issue these bonds, and decided that the "Town of Enfield" had no power to issue the bonds and coupons in controversy under said acts of February 25th, 1867, and February 24th, 1869, and perpetually enjoined the State officers from collecting taxes for their payment. In the same case the court decides that the words "town" and "village" do not mean the same thing, and that these bonds are void in the hands of third persons for want of such power to issue the same, (see *Welch vs. Post, 99 Ill., 471*), which, as we have seen, the Supreme Court of the United States will follow as being the source of authority upon the construction to be given to its own statutes.

The third error assigned is that: "The court erred in holding that in case there was power in said town under said laws to vote and issue the bonds and coupons, yet that one of said bonds and the coupons thereto belonging, which had been litigated in the State courts of Illinois by one Post, as shown in 'Exhibit A' (page 25 of the printed record), was not void in the hands of the Defendant in Error by reason thereof."

It appears in case of *Welch vs. Post, 99 Ill., page 473,* which we have the right to notice by virtue of the "stipulation" in this case, that a bill in chancery charging the illegality and want of power to issue the bonds in question was pending in the State court of Illinois and that a decree by default at the April term, 1877, was set aside at the October term, 1879, and before Defendant in Error became the owner of these coupons on the first day of January, 1880, as alleged in his declaration, to let in Augustus T. Post to make his defence as the owner of one of these bonds.

Now we respectfully submit that, as a pending bill in chancery is notice to the world of the equities therein claimed; and as both State and Federal courts agree that the issue of municipal bonds is the exercise of an extraordinary power, and that the purchaser of such bonds must come to the State where they were issued and at his peril take notice of statutes supposed to authorize such issue; whether he should not, upon the same principle, be chargable to the same extent with the rest of the world, with notice of the pending litigation respecting the validity of the property he is about to purchase?

In other words, if a purchaser of the bonds of an Illinois municipality is presumed to have come to Illinois and examined the local legislation affecting the same, why is he not, while in Illinois, chargable with notice of the then pending local litigation by bill for the exposition and construction of that legislation?

The Supreme Court of Illinois in *Welch vs. Post, supra,* not only declared the utter want of power, under section 10 of said act of 1869, to authorize the "Town of Enfield" to issue these bonds, but in respect to this one bond owned by Post, say: "The owner of one bond, however, although a non-resident of the State, has submitted to the jurisdiction of the court by answering the bill, and his interests in the subject matter of the suit may be determined by the decree to be rendered."

But we submit that there are sufficient facts in this record from which to charge the plaintiff with actual notice of the defences set up in the State court or to put him upon his enquiry, and such facts are: The declaration (page 3 of the printed record) shows that the coupons sued upon here were those maturing in January and July of the years 1880, 1881, 1882 and 1883, and that plaintiff purchased them on the first day of January, 1880.

The "Stipulation" (page 25 of Record) shows that this same Defendant in Error brought suit to the June term, 1880, of the Circuit Court of the United States, from which this case comes, upon coupons of these same bonds before then due. If this is true, then it necessarily follows that the coupons sued upon in the first suit were those which had matured before the year 1880, and were then "dishonored paper" when purchased, or at least while held by the Defendant in Error and before the alleged purchase (January 1st, 1880) of the coupons sued upon here; and being "dishonored paper," clipped from these same bonds, the same defences applied, and the Defendant in Error was chargeable with notice of all defenses including the pending defences thereto in the State courts, which the record (in *Welch vs. Post*) shows was from 1877 up to the present time. This state of facts carried actual "notice," and Defendant in Error is not an innocent holder of the coupons in this suit—

Facts which are sufficient to put holder of note upon inquiry are "notice:"

*Humphrey vs. Morse, 56 Ill., 394.*

And these authorities might be multiplied indefinitely. Hence the decree of the State court declaring the one bond void and which bound "Post" will bind Defendant in Error.

The applicability of this doctrine of "notice," to the bonds and coupons in question is assured from the fact that such "notice," sufficient to put any purchaser upon inquiry, is carried upon the face of these bonds and coupons in the shape of an illegal and unwarranted provision for the payment of interest at a place other than at the treasury of the corporation issuing them, to-wit: "at the First National Bank of Shawneetown, Illinois." (See copy of bond and coupon at pages 26 and 27 of the record.)

While there is no uniformity in the decisions of the various States as to the necessity of a purchaser of commercial paper to take "notice" at his peril of various extrinsic facts which may be more or less suspicious, yet there is no dissent from the proposition, that, if the face of the paper itself carries any defect, then the purchaser must make inquiry and is chargable with notice of whatever that inquiry would have or might have led to.

*Wade on Notice, section 90*, citing:
*Ayer vs. Hutchins, 4 Mass., 370.*
*Hall vs. Hale, 8 Conn., 336.*

And the Supreme Court of the U. S. in announcing the general rule that a party in possession of a negotiable instrument before maturity s to be presumed to be a holder for value without notice of any facts which might impeach its validity, say: "an exception being where the defect appears on the face of the instrument."

*Goodman vs. Simonds, 20 How., 343.*

It is not claimed there was any legislative authority to make these bonds nor the coupons payable at any other place than at the Treasury of "the town of Enfield," but they are, on their face, payable at another place, which the Supreme Court of Illinois says the "town of Enfield" had no power to do:

*City of Pekin vs. Reynolds, 31 Ill., 529.*
*People, &c., vs. Tazewell County, 22 Ill., 147.*
*Sherlock vs. Village of Winnetka, 68 Ill., 530.*

And while this illegal provision upon the face of these bonds did not render them void, still such an extraordinary provision, in open violation of the law, incorporated into and made part of every one of these bonds and coupons certainly made the purchaser chargeable with "explicit notice" of all defences thereto, and of the action of the State Court in *Welch vs. Post, supra*, wherein, as to the one bond held by Post the defence had become effectual by a perpetual injunction against the collection of this bond, and hence the judgment of the circuit court as to this bond was erroneous, as it is respectfully submitted by

CHARLES H. PATTON,
*Attorney for Plaintiff in Error.*

119-680

# SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1885.

## No. 1041.

**TOWN OF ENFIELD**, *Plaintiff in Error.*

vs.

**C. N. JORDAN**, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES,
FOR THE SOUTHERN DISTRICT OF ILLINOIS.

## BRIEF OF DEFENDANT IN ERROR.

**CONNOLLY & MATHER**, Attorneys for Defendant in Error.

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This case largely turns upon whether the word "*Village*" as used in § 10 of the Act of Febr'y 24th, 1869, was at that time a synonymous or convertible word in Illinois legislation, with the word "*Town.*"

If it was, then there was ample power in said § 10 to authorize the vote and issue of the bonds in controversy.

Opposing counsel makes the assertion in the commencement of his brief, that previous to that time (about March 1869) "the name "*Village*" was unknown to the general laws of Illinois." It never having been named in any "general *or special* law from the organization of the State "down to date so far as he could ascertain."

Counsel is much mistaken. In 1857 the Illinois Legislature chartered the "*Village*" of Antioch in the County of Lake.

Laws 1857 p. 1014.

February 16, 1865, the Legislature changed the name of the village of Danforth by special act, and referred to it as the Town, *or Village*, of Danforth !

Vol. 2, Priv. Laws 1865, p. 437.

The Legislature by special Act, passed in 1853, incorporated the *village* of Lockport.

Laws 1853, p. 216.

February 16, 1865, it changed the corporate name of Steuben by special act, referring to it therein as the "Town" *or* "village."

Vol. 2, P. Laws 1865, p. 562.

Again in February, 1867, the Legislature changed the corporate name of "Whitfield" to that of the "*Village* of Leland," and conferred on it the exact powers belonging to the "*Town*" of Belvidere,

3 Vol. Pri. Laws 1867, p. 606.

There are scattered through the Laws of Illinois prior to, or about, the date in controversy many Legislative Acts (for the purpose of changing names of Towns or otherwise) to *villages*.

Village of Roscoe, Laws 1853 p. 449.
Do of Cuba P. Ls. 1865 Vol. 2, p. 661.
Do of Lanville P. Ls. 1867, Vol. 3, p. 485.
Do of Geneva P. Ls. 1867, Vol. 3, p. 619.
Do of Elwood P. Ls. 1869, Vol. 3, p. 707.

The Supreme Court of Illinois in 1861, in the Illinois Central R. R. Co. vs. Williams, in passing upon an instruction to a jury, which was as follows, viz.:

"To constitute a town, city or village there should be "something more than simply a place or point at which "people live. There must be a dedication of the streets, "alleys, etc., to the public." Said:

This was substantially telling the jury that no matter how many people lived at a place, or what business was done there, it could not be a town or village, unless it was laid out or platted under our statute.

Such is not the law. Any small assemblage of houses for dwellings, or business, or both, in the country, constitute a village, whether they are situated on regularly laid out streets and alleys or not.

The opinion of the Supreme Court, in Martin vs. The People, cited and commented upon by opposing counsel in his brief (p. 5.) cites quite a number of other instances.

87 Illinois, p. 528.

In that opinion the Illinois Supreme Court hold that the words "village" and "town" are convertible and synonymous terms in Illinois legislation, and reach this conclusion from a similarity of the charter provisions of the two named corporations when compared, and from the legislative enactments, sometimes designating them "towns" and sometimes "villages." Without changing their corporate power or functions in any way.

It is insisted that the doctrine of this case was afterwards departed from in Post vs. Welch, 99 Ill. 471.

In the first place, this was not a unanimous opinion, J. J. Dickey and Sheldon dissenting, *upon the ground that the Court had in the Martin case held the two names to be synonymous.* J. Dickey had written the former opinion and it may be assumed should know what was meant by it.

It is true that two Judges dissent from the opinion in the "Martin" case, but it may be easily seen, not upon a difference of opinion as to whether a "Town" was in the sense of Illinois Legislation, a "Village," but upon the ground that, the Town of Lake, *as organized*, was neither a Town nor Village, *in the contemplation of* § 168, of the chapter on Villages, Cities and Towns.

This Martin case was decided in 1877, holding that "Town" and "Village" were convertible terms, and the Supreme Court, in its opinion, carefully reviews and compares certain charters given by the legislature to "Towns" and "Villages," and from their identity of phraseology, and design, hold that the names are synonymous.

Long before these bonds were voted, and issued, (June 11th, 1870, date of vote, and January 1st, 1871, date of bonds) the Illinois Legislature, was by its legislation, treating "Towns" and "Villages" as synonymous and convertible terms. This is well illustrated in two citations above, from the Laws of 1865, where the Legislature in enacting laws concerning the villages of "Steuben" and "Danforth," designate them in the Acts, "Town" *or* "Village."

In 1877, six years after these bonds in controversy were issued, the Illinois Supreme Court construed the word "Town" as used in the special charter of the Town of Lake as synonymous with the word "Village," as used in § 168 of the General Law of 1872, relating to Cities and Villages.

This decision is particularly pertinent when it is remembered that the Town of Lake charter which was being construed by the Supreme Court in this opinion, was passed at the *same* session of the legislature with the charter of Enfield, and the amended charter of the Illinois and Southeastern R. R.

The charter of the Town of Lake was passed March 26th, 1869.

The charter of the Town of Enfield was passed March 15th, 1869.

The amendment of the Illinois Southeastern R. R. Co. charter was passed February 24, 1869.

If the word "Town" as used by the legislature March 26th, 1869, in the charter of the Town of Lake was a synonymous word with "Village," why should not the word "Village" as used by the legislature February 24th, 1869, in § 10 of the amendment to the Illinois S. E. R. R. charter be synonymous with the word "Town" as used in the charter of Enfield, March 15th, 1869?

The charter of the Town of Lake was passed *eleven days* after that of Enfield, and only one month after that of this amended Railroad charter.

Surely, if the word "Town" meant "Village," in legislative intent, as used in the Lake charter on March 26th, 1869, and was then a convertible term with it, the word "Town" as used in the Enfield charter by the same legislative body March 15th, 1869, would also mean "Village," and the word "Village" as used by the *same* legislature, in § 10, of the amended R. R. charter, Feb. 24th, 1869, would likewise mean and be interchangable with the word Town. So that, certainly, the Illinois *legislative construction* of these two words, as derived from the character and phraseology of these various enactments for years prior to the voting and issuing of these Enfield bonds, as well as the construction of the Illinois Supreme Court, six years after their issue, (in Martin vs. The People) was harmonious in the conclusion that a Town was a Village and a Village a Town.

We do not, of course, differ with counsel for Plaintiff in Error, in that there must be express statutory power granted to a municipality to issue negotiable bonds, nor do we controvert his authorities cited on that point, but where we differ is this, we claim that if by Illinois legislation, and judicial construction thereof, before and at the time these bonds were issued and may presumed to have been negotiated, there was power to issue them vested in the corporate maker, no *subsequent change* of legislative or judicial construction would invalidate the bonds, whereas opposing counsel claims the contrary, and that this Court would be bound to follow the *subsequent* State Supreme Court construction in Welch vs. Post.

They cite, and mainly rely upon, the case of Welch vs.

Post, 99 Ill. 571, and insist that in view of this latter decision these prior *legislative constructions* and the case of Martin vs. The People, should be ignored.

It is insisted also in argument, that because the legislature used the expression "incorporated town" in the act of Feb. 25, 1867, and omitted it in the amendment to the charter of Feb. 24, 1869, but substituted in lieu of it the word "village" therefore a distinction was *intended* between incorporated town and village. That by the amendatory act villages were authorized to subscribe or donate aid and issue bonds in payment thereof, but incorporated towns were not.

Whether there be anything in this argument or not depends upon the question we have been considering, whether prior to and about that date (Feb. 24, 1869) there was any distinction in Illinois legislation between incorporated town and an incorporated village. If there was not, then the use of the words "*incorporated town*" in one act, and "*village*" in the amendatory act, contained no significance, and argues nothing in their behalf.

That the legislature had no such distinction in mind and intended nothing by the interchange of words is well illustrated by the Illinois Supreme Court where it points out the indiscriminate use of the words by the Legislature at its session of 1869. See

Martin vs The People, 87 Ill., pp. 527-8.

The Illinois Supreme Court when writing the opinion in this case (in 1877) was retrospectively considering whether the Legislature had been using these words in different senses, or, as interchangeable, and they then held, after a careful review of its legislative use in these different charters, that there was no distinction.

What difference then did it make, or what did it signify, that the Legislature used the different words in the original and amended charters instead of using the same in both?

We think the Legislature could have had no object in conferring power on villages to issue bonds, and refusing it to incorporated towns. It would appear more likely the intention was, by amendatory act, simply to supply an omission in the original charter. The Legislature had in the charter authorized counties to pay donations *in bonds*, but had only authorized (by § 9 & 11) Townships, Cities, and incorporated Towns, to vote aid and pay it in a tax. Afterwards by the amendatory act it authorized Counties, Cities, Villages and Townships, to donate *or subscribe* in aid of said railroad, and issue their bonds in payment. The original charter had also limited townships, cities, etc., in the amount of their donations. The amendatory act removed this restriction.

So that we think the purpose of the amendatory act was to add the power of *subscribing*, as well as donating, the aid and to give cities, townships and villages the power of *issuing their bonds* in payment, and removing the limitations of amount in the original act. And the word village in this amendatory act was used simply as a repetition and synonym of the "incorporated town" in the original charter and not with the intention of empowering a different set of municipalities to subscribe, or give aid.

Townships, by § 9 of the original charter, were authorized to vote aid, payable in a tax, so were incorporated towns by § 11, what object or reason could the Legislature have in enlarging the powers of townships in the amendatory act, by allowing them to issue bonds in payment of their donations and subscriptions and removing their restrictions as to amount, and refusing to do so as to incorporate towns?

The lack of any legislative motive or reason for this sort of discrimination shows plainly that the use of the different words in the charter and amendment was not for the purpose of *discriminating* between incorporated towns, and villages, but that the Legislature was simply following its own precedent in using the words interchangeably and as synonymous.

The Supreme Court of Illinois in deciding the *Martin* case clearly shows that the charters of "*incorporated towns*" and of "*villages*" are in all their material and distinguishing characteristics the same (87 Ill., p. 528.) This is further proof of the argument that the Legislature could have had no motive or reason for using the words otherwise than merely as interchangeable.

All that can be said of the case of Welch vs. Post, in this connection is, that it is not competent for the Courts or Legislature by a change in their rulings or constructions to deprive parties of their rights acquired whilst the legislative or legal constructions were favorable to the validity of such rights.

Gelpcke vs. City of Dubuque, 1 Wall 206.

Butz vs. Mascatine, 8 Wall 583.

Olcott vs. Supervisors, 16 Wall 690.

Chambers Co. vs. Clews, 21 Wall 324.
Elmwood vs. Marcy, 2 Otto 270.
Mitchell vs. Burlington, 4 Wall 294.
Havemeyer vs. Iowa Co., 3 Wall 270.
Thompson vs. Lee County, 3 Wall 327.
Lee Co. vs. Rogers, 7 Wall 181.
Havemeyer vs. Iowa Co., 3 Wall. 294.

It is true that this case is somewhat different in the facts involved in the foregoing cases, in that in the case at bar there was no decision of the Illinois Supreme Court upon the point in controversy at the time the bonds issued.

There was however, this unbroken line of legislative construction arising from these special acts of incorporation in which the words "*village*" and "*incorporated town*," had been interchangeably used in instances where their corporate organization and machinery were substantially alike.

Six years after the bonds issued came the first decision of the Illinois Supreme Court in harmony with this legislative construction, and thus the law stood until the Illinois Supreme Court decided the Welch and Post cases in 1881.

Is this a case where the U. S. Supreme Court is called upon to follow the latest decision of the State Supreme Court and ignore the earlier one and all the legislative construction referred to? We claim not. Our opponents insist it is, and cite numerous cases, on p. 6, of their brief.

The first case they rely upon is the Tioga R. R. Co. v. Blossburg, in 20 Wall. It involved the construction of the Statute of Limitations, of N. Y., which would be a decision in relation to a statute *local* in its character, and hence became *a rule of property*, dependant on the construction of a local law, which differs from the one at bar, in that the latter involves questions of general commercial law.

The two following cases cited by them in 93 and 100 U. S. Reports, were likewise different from the one at bar. The former, like the one above, relating to a local statute of limitations, and the latter presenting the question whether this Court would over-ride *its* former decision to follow, not the *later* of two State court decisions, but the *only* State Court decision construing the constitution. True, the latter, involved commercial securities like the case at bar. And the court in that case acknowledged the *general rule* of following State Court decisions construing its own laws and constitutional provisions, as contended for by our opponents, but the court add, there are undoubtedly *some exceptions*. One exception (it adds) is when the highest Court of a State has given different constructions to its constitution and laws *at different times*, and rights have been acquired under the former decision is followed and the latter ignored.

The court further say, after stating that there were no conflicting decisions of the State court on the constitutional question involved, that they were not constrained to refuse to follow the State court decision in order to save rights acquired on faith of their ruling in the *Concord case*.

The Concord decision (92 U. S. 625) had destroyed the validity of the bonds in controversy, but by reversing that decision and following the State court decision upon the *donation* question the rule of property established by the State court was upheld and property rights in the bonds saved, instead of being destroyed.

Besides, we understand the doctrine of the Gallatin County case to be that this Court will only regard State court decisions construing their laws and constitution, conclusive, *from the time they are made*, but will not give such decisions a retroactive effect and thereby allow them to render invalid contracts entered into with citizens of other States.

100 U. S. p. 54.

There is however, a strong dissimilarity between the Gallatin County case and the one at bar, in an important particular. There, as here, the bonds were issued some years before the State court decision, the doctrine of which held them valid. Between times however, this Court had, in ignorance of the State court decision, declared the bonds void as donation bonds issued contrary to the constitution, and the question arose as to the propriety of this Court changing its ruling to follow the State Court decision, it says, "with much more reason may we change our decision construing a State constitution *when no rights have been acquired under it*. * * "

100 U. S. p. 55.

Here it will be seen is a difference in the two cases which has everything to do with deciding the question. There had been no rights acquired under the Concord decision, to be lost by reversing it in conformity with the

State Court decision. Whereas, in the case at bar, just the opposite is the fact. If the *Welch* case is followed, rights acquired on the *faith* of the Martin case, and the numerous legislative constructions are lost.

In the South Ottawa case cited (in 4 Otto), the bonds involved in the litigation were issued *long after* the Illinois Supreme Court decisions which this Court followed in deciding those bonds void.

The next case cited and relied on in this connection by our opponents, is the State R. R. Tax case. (2 Otto.)

This case is not in point, for the reason that whilst it recognizes the *general rule*, they contend for, still it *expressly recognizes exceptions*, doubtless the *very* exceptions we contend for.

72 U. S. p. 618.

Nor did the foregoing case involve the main point in the case at bar, as to *which* of *two conflicting* State Court decisions this Court will follow, where property rights have been acquired, upon the *faith* of the *first* one, and hence we say it is not an authority in point.

Nor do the last two cases cited by them support their claim in this controversy.

The *Elmwood* decision (in 2 Otto 289) was a case where this Court followed State Supreme Court decisions *long ante-dating* the issue of the bonds in controversy, and upon the authority of which this Court ignored its prior contrary opinion in *St. Joseph* v. *Rogers* (in 16 Wall.)

This *Elmwood* decision was dissented to by three justices of this Court and has recently been virtually overruled by a unanimous opinion of this Court, at October

Term, A. D. 1885, in John S. Anderson &c. vs. Township of Santa Anna.

The Court say, in Weightman vs. Clark, 103 U. S., p. 260, "As a rule we treat the construction which the highest "court of a State has given a statute of a State, as part of "the statute itself. *It is only when, by giving such construc- "tion a retroactive effect*, it will invalidate contracts which "in our opinion, were lawfully made, *that we* DISREGARD "*them.*"

It will be seen that this case concedes the very exception which we contend for, and which, if we are right, leaves our bonds valid under the legislative constructions, and the *prior* decision of the Illinois Supreme Court, referred to.

The case of *Moores v. National Bank*, involved the construction of a statute of *Limitations*, which when establizhing a rule of property of a *local* nature or character we understand this Court follows unless there have been conflicting decisions of the State Court in its construction, and rights have been acquired under the former decisions. That any of their cited cases *involved these exceptions*, where this Court is called on to adhere to the former decisions and ignore the latter, *to save acquired rights*, does not appear.

The other cases cited from 2 Black, 6 Pet. and 24 How., were all fully reviewed by this court in its opinion in *Fairfield vs. Gallatin Co.*, (100 U. S. 47) and regarded as harmonizing with the exceptional rulings of this Court where it refuses to follow State Supreme Court decisions.

Of course, if § 10 of the Act of 1869, is construed to give *power* to the *Town* of Enfield to vote and issue the bonds, as we contend for, the Illinois Supreme Court authorities cited by appellant on pp. 6 and 7 of their brief, are not in point and unnecessary to be replied to.

It is next contended by opposing counsel that this case at bar is identical with the town of Concord case in 92 U. S. 625, and hence these Enfield bonds, like those, are void, by the doctrine of that decision.

The only point passed upon in the *Concord* case was whether the proviso in the separate section of the Illinois Constitution of 1870, made any distinction between "subscription" and "donation" bonds.

This point the Court reversed itself upon afterwards in *Fairfield vs. Gallatin Co.*, 100 U. S. 47, thereby placing itself in harmony with the Illinois State Supreme Court, to the effect that donations equally with subscriptions were intended to be saved by that instrument where there had been a *prior vote* under some law authorizing it.

In fact the Illinois Legislature by *two distinct acts* had previously construed the proviso in this way, viz.: An act approved March 17, 1874, and one approved May 29, 1877.

Hurd's Illinois Revised Statutes, 1881, pp 832-3.

And the Illinois Supreme Court had recognized this as the proper construction in these decisions:

C. D. & V. R. R Co. *et al.* vs. Smith, 62 Ill. p. 277.

The Chicago & Iowa R. R. Co. vs. Pinckney, 74 Ill. 277.

Middleport vs. A. L. Ins. Co., 82 Ill. 568.

So that we may venture the opinion that there is no point against the validity of these bonds derivable from their being *donation* rather that subscription bonds, since the record shows there was a *prior* vote (before July 2, 1870) under law authorizing it.

The next material inquiry is, what bearing, as an estoppel or otherwise, has the stipulation shown at p. 25 of record, (8th) upon the right of recovery or defense by the litigants in this suit.

That stipulation shows that defendant in error, at the June Term, 1880, of the Circuit Court recovered judgment against plaintiff in error on coupons then due of these same bonds.

It seems to us that opposing counsel reason *fine* to avoid the force of this former recovery as an estoppel when they argue that this is a *different* lot of coupons *now* sued on, and consequently a different cause of action, and that the present declaration contains the common counts and therefore the court can't tell under which count the recovery was had.

We think the stipulation of facts upon which the cause was submitted, (p. 7 of R.) as well as the assignment of errors, shows unmistakably that the recovery was had upon the coupons of these bonds and upon nothing else, and that within the meaning of the books the two judgments were recovered upon the *same* and not different causes of action.

Beloit v. Morgan, 7 Wall, 621-2.

This stipulation also bears upon another view of the case. It appears from it that litigation as to the validity of these same bonds between these same parties, was had in June, 1880 and judgment then rendered by the Circuit

Court sustaining their validity. The doctrine has been announced by this Court that it will not reverse a Circuit Court decision to conform to a State Court decision made in the meantime, unless the latter accords with its convictions.

Roberts v. Bolles, 101, p. 129.

When judgment was first had on these coupons in the Circuit Court, June, 1880, it was open and competent for plaintiff in error to have raised and urged this same defense, but the decision of the State Supreme Court, in Welch v. Post had not been rendered then, and was not for a year afterwards, so that the Circuit Court followed the legislative constructions referred to, and the case of Martin v. The People, and rendered judgment on the coupons upon the ground that § 10 of the Act of 1869, conferred the power to issue them.

Now this Court is besought to follow the decision of the State Court, made in the *meantime*. To do this, these legislative constructions, the doctrine of Martin v. The People, and this prior Circuit Court decision solemnly adjuging the validity of these bonds, and from which plaintiff in error took no certificate of division, must all be ignored.

It is also claimed that one of these seven bonds was adjudged void by the State Supreme Court, in Welch v. Post, and therefore, that defendant in error has no right of recovery upon *it*, at all events.

It appears from the stipulation upon which this case was tried, that defendant in error admitted one of the seven bonds was in litigation in that suit, between Welch v. Post, but he *disclaimed expressly*, any knowledge of *which one* it was, or that *he* had any connection with that suit. pp. 25-26 of Record.

It is clearly deducible further from the record, that whilst the suit between Welch and Post was pending that all the bonds and coupons got into defendant in error's hands who recovered judgment on the coupons in the Circuit Court, in June, 1880, about one year before the Welch suit was decided. P. 25 of Rec.

We do not see how, under the authorities, this Welch suit or judgment can affect defendant in error's rights, especially as it cannot be shown *which one* of the seven bonds was in that litigation, nor that defendant in error knew anything about it.

Carrol County, v. Smith, 111 U. S. 556.

Warren County v. Marcy, 97 U. S. 96.

Overdue coupons attached do not render bonds subsequently maturing, dishonored paper.

Cromwell v. County of Sac, 96 U. S. 51.

Railway Co. v. Sprague, 103 U. S. 756.

The last objection urged against the validity of these bonds by opposing counsel is, that they are on their face payable elsewhere than at the Treasury of the Town.

There seems to be no restriction as to this matter in the law under which they were issued, and therefore the authority of this Court is that they can be made payable elsewhere.

Lynde v. The County, 16 Wall 6.

Thomson v. Lee County, 3 Wall 338.

Gelpscke v. Dubuque, 1 Wall 178.

2 Danl on Neg. Insts. (2d Ed.) p. 454, (notes.)

Respectfully submitted,
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